

## **Political transitions in EU-Russia shared neighbourhood**

**Geopolitics and values as opportunities or  
challenges for the Quality of Democracy**

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**GEM STONES**

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## ***LIST OF ABBREVIATIONS***

AA	Association Agreement
ADP	Agrarian Democratic Party (Moldova)
ADR	Alliance for Democracy and Reform
AEI	Alliance for European Integration (Moldova).
ASEAN	Association of Southeast Asian Nations
BDPM	Bloc of Democratic and Prosperous Moldova
BSP	Budget Support Programme
CCC	Council of Court Chairs (Armenia)
CEPA	Comprehensive and Enhanced Partnership Agreement
CIS	Commonwealth of Independent States
CJIACC	Anti-Corruption Council and the Criminal Justice Inter-Agency Coordination Council
CoE	Council of Europe
CoJ	Council of Justice (Armenia)
CSF	Civil Society Forum
CSO	Civil Society Organisation
CSTO	Collective Security Treaty Organisation
CTIJ	Coalition for Independent and Transparent Judiciary
DCFTA	Deep and Comprehensive Free Trade Agreement
EaP	Eastern Partnership
EaPIC	Eastern Partnership Integration and Cooperation Programme
EC	European Commission
ECHR	European Court of Human Rights
EED	European Endowment for Democracy

EEU	Eurasian Economic Union
EIDHR	European Initiative for Democracy and Human Rights
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood Policy Instrument
EP	European Parliament
ESS	European Security Strategy
EUGS	EU Global Strategy
GAJ	General Assembly of Judges (Armenia)
GD-DG	Georgian Dream – Democratic Georgia
GDP	Gross Domestic Product
GIZ	Gesellschaft für Internationale Zusammenarbeit
GONGO	Governmental non-governmental organisations
GYLA	Georgian Young Lawyers Association
HCJ	High Council of Justice (Georgia)
HRAP	Human Rights Action Plan
JSCB	Judges Selection and Career Board (Moldova)
LRCM	Legal Resources Centre from Moldova
MP	Members of Parliament
NAC	National Anti-Corruption Center (Moldova)
NATO	North Atlantic Treaty Organisation
NIA	National Integrity Agency (Moldova)
NIJ	National Institute of Justice (Moldova)
OECD ACN	OECD Anti-Corruption Network
PAB	Performance Assessment Board (Moldova)
PCC	Public Constitutional Commission (Georgia)
PCM	Communist Party of Moldova

PCRM	Communist Party
PDM	Democratic Party Moldova
PLDM	Liberal Democratic Party Moldova
PLM	Liberal Party Moldova
PSRM	Socialist Party of Moldova
ROC	Russian Orthodox Church
RPA	Republican Party of Armenia
SCC	State Constitutional Commission (Georgia)
SCJ	Supreme Judicial Council (Armenia)
SCM	Supreme Council of Magistrates (Moldova)
SNA	Social Network Analysis
TACIS	Technical Assistance to the Commonwealth of Independent States
TAIEX	Technical Assistance Information Exchange
UNM	United National Movement (Georgia)
USM	State University of Moldova
VLAP	Visa Liberalisation Action Plan

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# ***PART I. THEORY AND METHODOLOGY***

# ***CHAPTER 1. INTRODUCTION***

## **I. INTRODUCTION AND RESEARCH QUESTION**

The enlargement of the European Union (EU) towards Central and Eastern Europe provided an inspiring case for many researchers to systematically study the influence of external actors on domestic policy-making. During the last ten years, however, the reduced speed of EU integration and its limited leverage has been paralleled by growing assertiveness on the side of Russia. The presence of two alternative regional integration frameworks, the EU and the Eurasian Economic Union (EEU) increases the perception that the countries in the EU-Russia shared neighbourhood need to make an international and geopolitical choice. The implications and potential consequences of external democracy promotion or obstruction are increasingly interpreted in terms of the broader geopolitical dynamics in the region. Against this background, this research intends to reply to the following question - what external actors successfully influence political reform processes in hybrid regimes. For this purpose, it will study how they interact with the domestic context and will explain why some are more successful than others in exerting influence on domestic institutional reforms.

This first chapter introduces and defines the main aspects of the research question and serves as the basis for the theoretical and empirical analysis. At the first place it discusses the relevance of the topic in light of the political and international developments in the last years. Secondly, the main concepts are clarified with reference to previous studies on hybrid regimes, political reforms processes and external and domestic actors. Thirdly, the findings and relevant approaches adopted by previous research are reviewed with the purpose of identifying a possible gap in the literature. Based on the conclusions reached, the contribution of the present research to the literature on political transitions and external influence will be discussed.

The recent trends of parallel external influence exerted by regional powers has the potential to both deepen and weaken the democratic qualities of the neighbouring political regimes. These international dynamics pose new theoretical and political challenges, which require an in-depth analysis, due to their innovative features and the uncertainty of their effects on political regimes. The increased competition for shaping domestic policies and international alignments of neighbouring countries has led regional powers, as the EU and Russia, to further adapt and shape their external policy approach according to the conditions of the different target countries. This use of new and country-specific policies has the capacity to shape differently the political developments at the domestic and regional level.

Furthermore, the implications of the ‘colour revolutions’ go beyond the domestic political agenda, covering fields as regime transformation and broader geopolitical dynamics in the region. Firstly, the social mobilisations in Ukraine, Georgia and Kirgizstan created high expectations regarding domestic democratic developments and eventual consolidation under the pressure of a prominent reform-oriented civil society. Secondly, the colour revolutions and, most importantly, their outcomes were closely followed in the region, due to the possibility of contagion. Connectedly, the possible impact of growing civic activism has motivated domestic legislative adjustments and/or reorientation of the external policies of the EU and Russia.

However, the limited mid-term consequence of the colour revolutions from the perspective of domestic democratization did not live up to the expectations posed by many domestic and international actors. Important antidemocratic hindrances, as corruption, oligarchic influence and lack of implementation of key reforms remain. In addition, several hybrid regimes, including Russia, have adopted more stringent legislation in order to limit or control the civic activism and/or international democracy promotion. In conclusion, the outcomes of the social and political transformations in the region, as well as the new features of the EU and Russia external influence emphasize the salience of the topic of the present research. In order to answer the research question (what external actors successfully influence political reform processes in hybrid regimes), the interaction between domestic and external actors (EU and Russia) in support or in opposition to democratic reforms will be analysed.

### ***CASE SELECTION***

This research will focus on the influence exerted by the EU and Russia on three post-Soviet countries – Armenia, Georgia and Moldova. The analysis of the interaction between the external policies developed by the EU and Russia and the domestic reform processes illustrates the interplay between foreign influence and domestic political context. The selection of these case-studies is based on the following three variables:

- ***The influence of the EU and Russia on their external policy choices*** is considered to be indicative of the general stance of the countries towards these two powers, and to contribute for understanding their influence on internal political transitions. This assumption is based on the competitive features of the two regional integration processes - the EU and the Eurasian Economic Union (EEU), which reinforces the perception that the countries in the region face a geopolitical choice. In addition, in both Moldova and Armenia,

the question on the most appropriate foreign association has been reconsidered several times, in response to the diverse claims and priorities expressed by different social and political actors.

In order to guarantee the representativeness of the selected cases, I focus on three different countries from the continuum of this variable. For instance, Georgia and Armenia would be the least-similar cases. At the present Georgia is in the process of implementation of Deep and Comprehensive Free Trade Agreement (DCFTA) with the EU, while Armenia has joined the Eurasian Economic Union after previously considering closer cooperation with the EU. Moldova is also closely linked with the EU through a DCFTA. However, shortcomings in the field of rule of law and corruption during the last two years, have led to internal political crisis in this country. The successful implementation of the DCFTA by Moldova has been questioned by the President of the Republic, Igor Dodon, who has expressed his desire to initiate “active cooperation with the Eurasian Economic Union instead” (Emerson & Cenuşa 2018: 2). This case selection is expected to shed light on the different reasons for the EU’s and Russia’s success in exerting influence in their shared neighbourhood.

- *The type of political regime* would partially correspond to the dependent variable of this research (reform processes in the field of Interinstitutional Accountability). Both Georgia and Armenia have been traditionally defined by power centralization in a strong executive. However, after the presidential elections in 2013, the Georgian legislative has been strengthened and Armenia undertook a similar decentralizing shift in 2015. These recent changes in Armenia and Georgia contrast with the initiation of the reverse reform in the case of Moldova. Its political regime was traditionally defined by a stronger legislative that controls a relatively weak executive branch. In addition, this political evolution corresponds to the varying degree of social centralisation in the three countries – where Armenia displays a more homogeneous social features, followed by Georgia and Moldova, as the most socially fragmented country among the three cases studied.

The selection of countries with three different political regimes is expected to clarify the role of this institutional arrangement for the political transitions and for the influence of the EU/Russia on them, while allowing a cross-case comparison. This variable is relevant, due to the differentiated influence of the two external actors. On the one hand, the EU has developed political conditionality that concerns reforms of the democratic check-and-balances, corruption and respect for human and minority rights. On the other hand, the lack of political conditionality in the case of Russia, has led different researchers to conceptualize it as an autocracy promoter in the region (Obydenkova and Libman, 2015).

- *The extent to which the three countries depend on the EU and Russia* is an independent variable for the selection of the cases, given the importance of security, economic and social interdependences. For instance, Armenia displays greater security dependence on Russia, while Moldova and Georgia coexist with secessionist regimes that benefit from Russian support. In the case of Armenia, Russia provides security against Azeri aggression in Nagorno-Karabakh, while in Transnistria, South Ossetia and Abkhazia, Russian military forces guarantee the security of the Russian population in the separatist regions. On the other hand, the involvement of the EU in these territorial conflicts is much more limited in comparison to Russia (Adammer, 2017; Obydenko & Libman, 2015).

From the economic point of view, due to the trade liberalization adopted by the EU, Moldovan exports to the EU represent 62.0%, while those to Russia reach only 12.0% of its total exports (Emerson and Cenuşa, 2016). In the case of Armenia, the economic dependence on the EU is comparatively reduced (21.9% of its exports), while Russia represents 27.3% (European Commission Directorate General for Trade 2019A). Georgian exports to the EU represent 21.0% of its total exports. However, the share of exports to Russia amount only 13.2% (European Commission, 2019c). These trade relations show that the three countries selected maintain different degree of interdependence with the EU and Russia.

Lastly, the socio-economic dimensions of these case studies, may provide a more complete perspective. Despite its relatively higher Gross National Income (GNI) per capita (9450\$ in PPP), Georgia is defined by higher inequality (GINI index of 40.1), in comparison to the other two countries, Armenia (GNI per capita, PPP - 9000\$ and GINI index – 31.5) and Moldova (GNI per capita, PPP – 5670\$ and GINI index – 26.8) (The World Bank, 2017). In conclusion, the country-case selection is based on one dependent and two independent variables with different features, which guarantees representativeness of the current research.

## **II. DEFINITION OF THE MAIN CONCEPTS**

The analysis of the main concepts of the research question clarify its focus - what external actors successfully influence political reform processes in hybrid regimes. Therefore, literature on hybrid regime, political reform processes and domestic and external actors is discussed below.

### ***HYBRID REGIMES***

The choice of the term hybrid regimes is based on the understanding that most of the regimes of the post-Soviet EU-Russia neighbourhood fit into this category. The emergence of this concept reflected the realisation that the empirical evolution of the wave of political transformations that initiated in the 1970 had discredited the transition paradigm. This led to the definition of concepts as diverse as illiberal democracy (Zakaria, 1997), defective democracy (Merkel 21004), delegative democracy (O'Donnell, 1994b) or competitive authoritarianism (Levitsky & Way 2006). Some of these conceptualisations are based on the absence of certain democratic features, as, for instance, the respect of civil and political rights (Zakaria 1997 in the case of illiberal democracies) or the lack of effective power of elected officials, political party competition, free and fair elections or civil and political liberties (Diamond 2002 in the case of semi-democracy).

Merkel, on the other side, takes the concept of embedded democracy as the basis for his research and defines four different types of defective democracies: exclusive democracy, domain democracy, illiberal democracy and delegative democracy (Merkel, 2004).<sup>1</sup> In a similar vein, O'Donnell opposes representative democracy to delegative democracy (O'Donnell, 1994). Levitsky and Way also introduced the concept of competitive authoritarianism in order to reflect the wide variety of political regimes that combine democratic and autocratic features (Levitsky & Way 2006). With the purpose of systematising these different typologies and concepts, Diamond defined a continuum of political regimes that range from liberal democracy, includes electoral democracy, ambiguous regimes, competitive authoritarianism, hegemonic electoral authoritarianism and ends with politically closed authoritarianism (Diamond 2002).

Given the variety of typologies and concepts developed to describe the grey zone between democracy and autocracy, this research will adopt the term **hybrid regimes**, due to its capacity to comprise the different regimes and features described above (Diamond, 2002; Morlino, 2011). This term implies the presence of a set of ambiguous institutions of past political system that has been corrupted in the present. It has been defined as:

*“a set of institutions that have been persistent, be they stable or unstable, for at least a decade, have been preceded by authoritarianism, a traditional regime (possibly with colonial characteristics), or even a minimal democracy and are characterised by the*

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<sup>1</sup> According to the typology developed by Merkel (2004) these defective democracies have the following features – exclusive democracy excludes segments of the population from the “civil right and the universal suffrage”; domain democracy in which important veto players control specific domains that should be governed by the elected representatives; illiberal democracy in which the weak state of the rule of law does not guarantee the “equal freedom of all citizens”; and delegative democracy in which the democratic check and balances do not effectively exert control over the executive (Merkel, 2004: 50).

*break-up of limited pluralism and forms of independent, autonomous participation, but the absence of at least one of the four aspects of a minimal democracy”*(Morlino 2011: 56).

Such a versatile definition proves to be very useful for the analysis of a variety of political regimes, due to the possibility to adapt its features to their different political origin and current characteristics. The specific features of the historical legacies of the previous regime and their connection to the hybrid regimes analysed will be presented in the empirical chapters with the purpose to adapt this broader concept to the regional context studied. Importantly, post-Soviet hybrid regimes find their origins in a **totalitarian regime**, which according to Friedrich and Brzezinski presents the following features:

*“(1) a totalist ideology; (2) a single party committed to this ideology and usually led by one man, the dictator; (3) a fully developed secret police and three kinds of monopoly or more precisely monopolistic control; namely, that of (a) mass communications, (b) operational weapons, and (c) all organisations including economic ones, thus involving centrally planned economy. [...] Such monopoly is not necessarily exercised by the party. [...] The important point is that such monopolistic control is in the hands of whatever elite rules the particular society and thereby constitutes its regime”* (Friedrich & Brzezinski 1965: 126).

According to Juan Linz three main elements need to be present simultaneously in order to differentiate totalitarianism from other non-democratic regimes: “ideology, a single mass party and other mobilizational organisations, and concentrated power in an individual and his collaborators or a small group that is not accountable to any large constituency and cannot be dislodged from power by institutional, peaceful means” (Linz 2000: 67).

Besides, it is important to consider that hybrid regimes do not fulfil the **minimalist definition of democracy**, which, according to Robert Dahl, requires the presence of a) universal suffrage; b) free, competitive, recurrent, and fair elections; c) more than one party; d) different and alternative media sources (Dahl, 1971). In addition, Schmitter and Karl add the requirement that the democratic institutions “are not subject to or conditioned by non-elected parties or exponents of other external regimes” (Schmitter & Karl 1992: 45 quoted in Morlino, 2011: 30). This minimalist definition is commonly used in order to establish a threshold of procedural requirements that are expected to serve as a guarantee of the substance of democracy – the exercise of political rights, as freedom of expression, union and association.

## ***POLITICAL REFORM PROCESSES***

The term processes of political change may refer to different degrees of transformation of regime dimensions. For instance, political transitions from authoritarian rule to democratic installation are one example of deep political change. On the other side, partial change can take place when only one or several dimensions of a democratic regime evolve, leading to more or less deep transformation of the political system. This partial change may imply the shift from majoritarian to consensual democracy or a different institutional arrangement for the appointment, promotion and dismissal of judges (Morlino 2011: 56). However, political transformation is not limited to changes in government or parliamentary majorities.

This study focuses on processes of partial political change in hybrid regimes that have been persistent for at least a decade. **Political reform processes** are defined as the main mechanisms for peaceful transformation of the institutional, political and social domestic structures, which takes place according to predefined rules for change. Therefore, political reform processes comprise three elements – domestic structures, predefined institutional norms and the action of domestic actors that seeks to influence the outcome of the political change.

Firstly, **domestic structures** here refer to what Cowles *et al.* define as system-wide domestic structures, which cover the “nation-state, its society and economy as a whole” (Green *et al.* 2001: 5). More specifically, political reforms, as they are considered here, affect “the nature of the political institutions (the “state”), basic features of the society and the institutional and organizational arrangements linking state and society and channeling societal demands into the political system” (Risse-Kappen 1991: 484). It is important to underline that the domestic structures subject to reform processes analysed in this study have more comprehensive features than the policy structures, which refer to the “political, legal, and administrative structures that interpret and carry out” issue-area specific policies (Green *et al.* 2001: 5). Examples of this second type of domestic policies are the food-security, immigration or telecommunication policies (Delcour, 2017; Langbein, 2013). This differentiation implies that the subject-area of the present research reflects transformations in the broader relationship between state and society, as opposed to institutional and legal adjustments that might take place in policy-specific areas that are more commonly studied in the Europeanization literature (Dimitrova and Dragneva, 2013; Langbein 2016; Langbein & Börzel 2013); Delcour, 2017).

Secondly, **institutional norms** have an essential role for reducing the uncertainty of political transformations. While in political transitions the “rules of the political game are not

defined” and are object of arduous contestation, partial political change in more stable regimes is expected to follow certain predefined rules, concerning the terms and accepted parameters of variation of the transformation (O’Donnell et al. 1986: 6; Pridham & Vanhanen 1994). Once established, these rules are still subject to change by domestic actors. Furthermore, subsequent reform processes may strengthen democratic norms or authoritarian rules/practices, which, as a consequence may lead to democratic deepening or authoritarian backlash in hybrid regime. In democratic context these changes “occur within the democratic norm of contingent consent” (O’Donnell et al. 1986: 68). However, in hybrid regimes democratic rules co-exist with certain authoritarian rules or practices which might benefit of different degree of institutionalisation or formality and in this way increase uncertainty of domestic reform processes.

Thirdly, the action of **domestic (and sometimes international) actors** influence directly reform processes. They play an essential role, because the transformation of the “institutional arrangements ha[s] distributional consequences” and involves a struggle or competition of groups or individuals with divergent interests (Adam Przeworski 1996: 49; Migdal 2001). Furthermore, reform processes have different consequences in the distribution of social power, welfare and security among domestic actors. The role of the different domestic actors and their action in reform processes will be considered in detail below.

The analysis of reform processes can be composed of different stages that include selection, implementation/institutionalisation and internalisation of the newly adopted rules. The differentiation between several levels of political change has been borrowed from the norm diffusion literature. From this perspective it is possible to establish the following categories: rhetorical commitment; formal adoption of legal and administrative measures; and behavioural compliance (Langbein and Börzel, 2013). Another classification that focuses on the policy-making process comprises three steps – rule adoption, rule implementation and rule internalization by the main domestic actors (Schimmelfenning, Engert, & Knobel 2006) (Morlino, 2011). An additional category of rule selection has been introduced for the purpose of studying the external influence of international actors. This category allows to measure whether and to what degree the considered external actor constitutes a normative point of reference for domestic agents (Lavenex & Schimmelfennig 2009). Given that this research focuses on the analysis of the contribution of both domestic and external actors the following reform stages have been defined:

- Rule selection consists in the choice of the specific norm to be adopted.

- Rule adoption refers to the adoption of the legislative measures required for the implementation of the rule;
- Rule institutionalisation focuses on the adaptation of the institutional setting and of the administrative practices required for the implementation and judicial enforcement of the rule (Schimmelfenning & Sedelmeier 2005: 4);
- Rule internalisation refers to the “reflective and individual adoption of the rule”;
- Rule habituation refers to the adoption of the rule as unreflective process, when individuals take it for granted (Schimmelfenning & Sedelmeier 2005: 4).

Choices made by domestic actors at every stage of reform process represent key elements in the analysis of political change, as they have deep implications for the democratic deepening or worsening of the political regime. In addition, the extent to which these choices are shaped by domestic considerations, or by the external influence exerted by the EU or Russia is central for understanding the international implications of the reform processes.

### ***DOMESTIC AND EXTERNAL ACTORS***

**Domestic actors** in the EU-Russia Neighbourhood are considered to be the main agents that decide on the terms in which the reforms processes are implemented and that filter to what degree the EU and Russia manage to influence these processes. Therefore, domestic individual and collective actors constitute the main focus of the present research. Given the focus of previous Europeanisation literature on elite decision-making processes, there is a lack of systematic research on the full constellation of domestic actors that intervene in domestic reform processes. Consequently, this research will seek to map all relevant actors and analyse their interaction with the domestic reforms. Given this inductive approach, a broad perspective on domestic actors will be adopted, covering all institutional (formal and informal) and social actors that intervene in the reform processes. Consequently, this study will cover a broad range of actors, including political parties, institutions, as well as their representatives and members, interest groups, informal networks, mass media, civil society groups, movements or organisations, as well as relevant social figures. The preferences and identities of these actors, as well as the strategies and practices they adopt as part of the competition among them, are key for understanding political change (Migdal 2001; Delcour 2017; Ademmer 2017).

Different typologies have been developed on the basis of the features of domestic actors. They have been defined as veto players and agents of change, according to their role in the political change (Morlino, 2011); as ruling elites, opposition elites and economic elites, if

their position in the political system is considered (Tolstrup 2014: 127:128); or receivers, producers, senders and facilitators of information according to their contribution to the policy transfer processes (Wolman and Page, 2002; Delcour, 2017b). The focus on their institutional levels, allows to study supranational, national, subnational levels and transnational networks and non-governmental organizations (Obydenkova and Libman, 2015).

As this research focuses on domestic reform processes, a typology of domestic actors will be developed on the basis of the role they play. It is, thus, expected that through empirical analysis, it will be possible to differentiate between the roles adopted by domestic actors towards political reforms. This research outcome is expected to feed into a typology of domestic actors according to their role in the reform processes. In this sense, the typology of actors' role in institutional change may provide an illustrative example of the main groups according to their stance towards change – insurrectionaries; symbionts (parasitic or mutualistic); subversive and opportunists (Mahoney and Thelen, 2006). Even though this example refers to domestic institutional change, without reference to international influence, it is considered to provide an interesting categorization of the different roles adopted by domestic actors in similar processes. Therefore, based on previous research, this study hypothesizes the existence of the following preliminary groups– veto players that adopt a conservative positions towards the reform processes; agents of change that seek the advancement of key democratic reforms. In addition, it is expected to detect two additional types– discursive supporters of democratic reforms, who do not effectively contribute for actual implementation or internalization of the reforms; and lastly, actors that openly oppose democratic reforms.

In addition, it is considered that it might be useful to develop a parallel typology of domestic actors according to the resources that they control – organisational, material, ideational or network resources. Social groups will have access in different degree to economic resources, to formal legislative initiative, or to key political figures that can support or facilitate a reform process. The capacity to mobilise social (or electoral) support of a specific reform is an important political resource, as well as is the contact with international actors that facilitates the access to norm socialization and/or foreign resources, as well as to technical expertise. These initial hypotheses regarding the different types of actors in the domestic context is expected to be confirmed, refuted or enriched as a consequence of the empirical analysis.

The interests, identities and strategies used by social and institutional actors involved in partial political change are expected to be relatively more stable in hybrid regimes than in

political transition. However, in contrast to consolidated democracies, hybrid regimes on occasions lack electoral stabilisation, definite patterns of partisan competition and stabilisation of party leadership (Morlino, 2011). Consequently certain events as elections might serve or be perceived as an opportunity for deeper political change. It is, thus, hypothesised that in key moments as national elections, new political actors and strategies might emerge with the purpose of influencing the distribution of power relations. Such events and the consequent changes in government or parliamentary majorities are conceived as factors that influence political reform processes, due to their capacity to transform the terms in which political participation and competition between domestic actors take place.

The literature on **external actors**, and specifically on EU and Russia, differentiates between national, regional, international and non-governmental levels, illustrating in this way the difficulties in their conceptualisation as unitary political actors (Obydenkova and Libman, 2015). This study analyses the influence of external actors, including institutions at the national, regional and international levels, as well as non-governmental organisations or private actors, when they are involved in the process. A case-specific analysis of external influence of the EU and Russia in the third chapter differentiates between these four levels of external actors' involvement. However, it is important to emphasize that the EU and EEU will be considered as unitary actors. Therefore, the systematic analysis of individual member states influence will be provided only in the case of Russia, and not in the case of the EU. In order to provide a relevant insight on the external influence, this analysis takes under consideration the methods and instruments developed at each policy level.

The methods and models of external influence have been analysed in detail in the norm diffusion literature (Schimmelfenning, Engert and Knobel, 2006; Lavenex and Schimmelfennig, 2009; Börzel and Risse, 2012; Kneuer and Demmelhuber, 2015; Tina; Freyburg *et al.*, 2015). The EU and Russia use these models to influence the perception of different social and political actors of “what is considered appropriate, legitimate or correct” and modify their interests and preferences (Keukeleire, St. & Delreux 2014: 133; March, J.G. and Olsen 2008). The models for external influence that will be considered in the present research are the following:

- Imposition consists in the use of force by external actors in order to influence the political developments in a foreign country (Morlino, 2011);
- Active leverage focuses on the strategic cost-benefit calculations of the domestic actors on the basis of instrumental rationality or the logic of consequentialism. It consists in the use

of positive and negative conditionality by external actors with the purpose of influencing the behaviour and/or strategic choices of domestic actors (Kneuer & Demmelhuber 2015).

- Linkage focuses on enabling and strengthening domestic social actors through socialisation in order to enable them to perform the desired domestic reforms. It aims the internalisation of political norms through the linkages established with international actors and mobilizes the logic of appropriateness for influencing actors' behaviour (Freyburg et al. 2015).;
- Partnership is the process of arguing and truth-seeking defined by Thomas Risse, in which actors challenge causal or normative statements in order to find a consensus. As Korosteleva defines partnership, it involves a learning processes about the needs and preferences of the other partner. The interaction between international and/or domestic actors in this case is expected to respect the equality between them in order to make possible a meaningful discussion and a consequent agreement. This model is based on the communicative rationality or logic of arguing (Borzel and Risse, 2000; Korosteleva, 2012).
- Emulation refers to the adoption of rules, policies or practices due to the successful example of other states or international actors (Morlino, 2011);
- External governance, on the other side refers to the socialisation in and adoption of democratic norms and principles by public administration in sectoral-specific domestic policies, as environmental or agricultural policy (Freyburg et al. 2015).

It is interesting that Gergana Noutcheva differentiates the following degrees of compliance according to the different logics of behaviour that are involved – genuine compliance, rationality-based compliance, legitimacy-based compliance, non-compliance, fake and imposed compliance (Noutcheva, 2012).

### **III. LITERATURE REVIEW ON THE INTERACTION BETWEEN DOMESTIC AND EXTERNAL FACTORS**

The present research draws on three types of literature for the definition of the theoretical framework and research design: research on norm diffusion, Europeanization and autocratic external influence; studies on the transformation in the post-Soviet context and the literature on democratic qualities, which provides the basis for studying political reform processes.

## ***DEMOCRATIC AND AUTOCRATIC EXTERNAL INFLUENCE LITERATURE***

**External influence** has been analysed mainly in terms of norm diffusion and Europeanization performed by the EU and other international organisations (Risse-Kappen, Ropp and Sikkink, 1999; Schimmelfenning and Sedelmeier, 2005; Dimitrova and Dragneva, 2013; Langbein, 2013; Langbein and Börzel, 2013). Initially, the dynamics that take place between domestic actors, international organisations and transnational civil society were analysed mainly from a top-down perspective, based on the external influence developed by the EU (Borzel and Risse, 2000; Schimmelfenning, Engert and Knobel, 2006). This research has mainly focused on understanding the different policy instruments, the conditions for effective external influence and impacts on domestic institutional and political frameworks.

External influence would be conceptualised on the basis of the policy-instruments and mechanisms mobilised by the EU. Therefore, the main research focus is on the strengths and weaknesses of EU conditionality or socialisation of domestic elites (Keukeleire, St. & Delreux 2014: 133; March, J.G. and Olsen 2008; Schimmelfenning et al. 2006; Borzel & Risse 2000). Recently, these theorisations have been complemented by research on the capacity of the EU to influence political change through sectoral cooperation. This approach, defined as external governance, is increasingly used in the European Neighbourhood Policy (ENP) (Freyburg et al. 2015).

In the context of the Europeanization literature Schimmelfennig proved that candidate states may successfully influence the direction of international negotiations through the logic of arguing and persuasion - rhetorical entrapment (Schimmelfennig, 2001). These conclusions suggest that the three behavioural logics (consequentialism, appropriateness and persuasion) might be considered as effective. However, they are operational with different elites or party representatives. For instance, countries with liberal party-constellations followed a normative-based attitude, while the mixed-constellation party systems adopted reforms only as consequence of their rhetorical entrapment.

In spite of this differentiation, most of the Europeanisation and norm-diffusion literature does not prioritise the domestic conditions, which are usually reflected exclusively in terms of the analysis of the legitimacy and resonance of the norms in the domestic context (Babayan, 2016). However, the comparatively reduced capacity to influence political reforms in this region, due to the lack of EU membership perspective, has led researchers to focus on the internal conditions in the countries-target of norm diffusion and to recognise the role played by

domestic actors (Lavenex and Schimmelfennig, 2009; Langbein and Börzel, 2013; Tina; Freyburg *et al.*, 2015; Ademmer, 2017; Delcour, 2017b).

Connectedly, researchers have identified relevant aspects reflecting domestic institutional or social features for explaining the impacts of norm diffusion or external influence. For instance, Schimmelfennig *et al.* explain the variation in the outcome of international socialisation on the basis of the three types of domestic party constellation (Schimmelfennig, Engert and Knobel, 2006). Ademmer (2017) and Delcour (2017) adopt an agency-centred perspective which prioritises the preferences of domestic actors. Other studies reflect the central role of the different domestic actors, as formal and informal veto players (as powerful business actors) (Langbein and Börzel, 2013) or domestic gatekeepers (as ruling elites; opposition elites and business elites) (Tolstrup, 2014).

Dimitrova and Dragneva in their analysis of the state-aid regulation in Ukraine prove that powerful domestic veto players are key for understanding regulatory convergence. In addition, they define two types of veto players: formal (president, Parliament, and the Anti-monopoly committee) and informal veto players (the two main oligarchic groups – Achmetov and Firtash networks) (Dimitrova & Dragneva 2013). Most of these studies, however, focus on sectoral regulatory convergence – state-aid regulation in the case of Dimitrova and Dragneva (2013); automotive industry, telecommunication and food-safety (Langbein and Börzel, 2013; Langbein, 2016) and the reform of the food-safety and migration policies (Delcour, 2017). Therefore, it is worth noting that the main focus of the current literature on the topic reflects political change in policy structures, and not in system-wide domestic structures, as defined above. An interesting exception is provided by the research of Nelly Babayan on Democratic Transformation and Obstruction in the South Caucasus, which adopts the donors' perspective in order to analyse the party politics, electoral system and media (Babayan, 2016).

The majority of the literature concludes, however, that it is important to differentiate between several domestic actors. It is, thus, worth to clearly weight the costs and benefits of the reform processes from the perspective of domestic veto players, including both those that belong to the formal institutional framework and those that exert influence in an informal way through their penetration with the state system (Risse-Kappen, Ropp and Sikkink, 1999; Schimmelfennig and Sedelmeier, 2005; Dimitrova and Dragneva, 2013; Langbein, 2013; Langbein and Börzel, 2013). In addition, it has been confirmed that in case of preferential misfit between the consequences of the reforms and the elites' priorities, policy instruments based on

socialisation and the logic of appropriateness do not have significant influence on the actors' behaviour. Furthermore, resonance did not significantly contribute for positive compliance, reflecting in this way a relatively reduced explanatory capacity of the constructivist-based factors. Other authors, however, point out that policy resonance and legitimacy of the reforms contribute for an increased 'effectiveness' in their implementation and can be considered as a necessary, but insufficient condition (Lavenex and Schimmelfennig, 2009; Delcour, 2017b).

Lastly, Delcour (2017) shows that policy change in food safety and migration policy took place in response to EU strengthened positive conditionality. Ademmer also concludes that formal compliance without significant implementation, takes place when positive EU conditionality supports the reform processes (Ademmer, 2017). Therefore, both Delcour and Ademmer claim that domestic actors and the context in which they operate still provide the key to effective implementation. Delcour claims that in spite of their role as filters in reform processes, the different agents of change and actors involved have not been analysed in detail. Consequently, the next step to complement Delcour's research would be to perform "an in-depth analysis of the constellation of actors engaged in the policy transfer process in the reception context" and explore how interactions re-shape norms and instruments (Delcour, 2017: 166). In addition, Ademmer concludes that in the EU-Russia shared neighbourhood executive-related elites constrain the influence of external actors on domestic change, and recommends the creation of "a level playing field for various actors in the ENC [European Neighbouring Countries] in order to facilitate the empowerment of reform coalitions" (Ademmer, 2017: 10). These two points regarding future research clearly indicate the possibility for insightful and policy-relevant research that focuses on domestic actors and their role in the negotiation, adoption and implementation of the reforms.

On the other hand, the last years have witnessed the emergence of new literature concerned with the effects of Russia's external influence on EU-supported reforms. It is interesting that this growing literature illustrates a broader trend in the research on the influence of regional actors defined as autocratic or hybrid regimes (Chen and Kinzelbach, 2015; Delcour and Wolczuk, 2015a; Hassan, 2015; Kneuer and Demmelhuber, 2015; Risse and Babayan, 2015). According to Babayan, the democratic-blocking influence exerted by Russia would be better defined as "*modi operandi* or frameworks for influencing neighbouring countries" used in order to "halt democratization and make its own policies or cooperation with them attractive" (Babayan 2016: 59). She identifies two main *modi operandi*: business- energy and politics-security, which illustrate the use of conditionality and regional interdependences.

Tolstrup, on the other side, analyses the main strategies used by ‘black knights’ in their support of authoritarian practices in election periods, which include signals of invincibility; deterrence of elite defection; weakening of the opposition; dampening popular protests; and “countervailing pressure from foreign democracy promoters” (Tolstrup 2015: 674-678). Obydenkova and Liebman illustrate how conflicting and diverse can be the interests of these different organisations. Instead of conceptualising Russia as a unitary actor, it is possible to differentiate the internal dynamics among the state actors involved in external influence. Obydenkova and Liebman conclude that autocratic external influence is qualitatively different from the past, due to the lack of an underlying ideology and to the effective adaptation of Russia to the democratic human rights discourse (Obydenkova and Libman, 2015).

Research on the impact of the influence of Russia conceptualizes it mainly as a factor that reduces the EU capacity to exert influence (Tolstrup, 2014; Ademmer, 2017; Delcour, 2017b). However, studies of sectoral convergence in the fields of migration policy, food safety and energy showed that Russia did not achieve the expected negative effects on EU promoted policy change. Instead it inadvertently played a facilitating role for the selection by domestic actors of the EU model (Tolstrup, 2014; Delcour and Wolczuk, 2015b; Ademmer, 2017; Delcour, 2017b). Connectedly Ademmer concludes that the interplay between preferential fit of the political elite and the use of interdependences by Russia provide a satisfactory explanation of the integration choices made by post-Soviet countries (Ademmer, 2017).

Lastly, on the basis of detailed genealogical study of the electoral legislation in nine post-Soviet countries, Max Bader defines three persistent patterns of diffusion: a first group copies the Russian model; a second group has used a different model, but the legislation is largely based on Russian legislation; and in a third group (Armenia and Georgia) is largely original, but adopts certain non-democratic elements (Bader 2014: 1352). In conclusion, this literature on autocracy promotion or democracy obstruction reflects the growing assertiveness of Russia and complements the previous research on Europeanisation and norm diffusion.

### ***POST-SOVIET POLITICAL TRANSFORMATIONS***

Research on the post-Soviet context provides more specific insight on those domestic features that significantly condition institutional change and norm diffusion. Important legacies as powerful veto-players and informal institutions provide alternative socialisation and reward-punishment mechanisms that exert influence on domestic actors’ behaviour in parallel to the formal institutional framework (Gel’man, 2003; Aliyev, 2015; Delcour, 2017b). Therefore, the

literature on informal networks contributes for more complete understanding of the processes of legitimation and internal regulation, that are rarely analysed in detail in the literature on external influence in post-Soviet countries (Delcour 2017; Magen & Morlino 2009). In order to bridge this gap, the present research will bring insight from the literature on post-Soviet transformations in the analysis of the preferences, identities and strategies used by domestic actors in their definition of institutional reform processes.

Consequently, post-Soviet literature might provide important analytical tools for studying this interaction between the external influence and domestic reform processes. It is important to keep in mind that the choices of domestic actors are influenced by formal political system, informal neopatrimonial networks and the external influence. It is, thus, important to complement the research on the institutional framework with the study of the “resource endowments and interest alignments of collective actors in light of historical pathways that have produced such constellation” (Kitschelt *et al.*, 1999; Hellmann, 2015). Secondly, actors that operate in different settings – official or unofficial; domestic or international – may use different discourses in order to frame or to veil their real intentions. Interactions in such context may reveal several levels of normative discourses and logics of action. Connectedly, the consideration of discourse and actions in both formal and informal settings, provides deeper understanding of the interactions in hybrid regimes (Koehler and Zürcher, 2003).

Thirdly, the research on post-Soviet neopatrimonial networks provides relevant insight regarding their internal dynamics and their interaction with the institutional framework and larger societal context. Neopatrimonialism has been defined as the “condition of subordination of the state coercive and administrative apparatus to the individual executive on the basis of the ‘loyalty and rewards’ principles” (Guliyev 2011: 583), in which patronage networks play the role of informal system of appointment of loyal employees and selective release of a wide variety of public material resources in order to secure patrimonial control of key state resources, recruitment processes, electoral support, or influence over segments of society. Members of these networks follow informal rules that serve as the basis of their thrust and their expectations regarding the final outcome of the interaction (Kopecký, 2006; Meyer-Sahling, 2006; Guliyev, 2011; H. E. Hale, 2015c; Hellmann, 2015).

As this definition illustrates public and social resources acquire different meaning and role in the context of informal and neopatrimonial network relationships. The management of state resources, recruitment processes and electoral support in the formal democratic system

and their parallel use as a bargaining chip in informal neopatrimonial networks, undoubtedly influence the behaviour of domestic actors. Post-Soviet legacies, however, affect not only the cost-benefit calculations of domestic actors. Delcour (2017: 156) shows how the adoption and application of EU rules in the field of migration “can be diverted, exploited as a resource [...] and re-shaped through informal rules and practices”. The presence of informal networks, thus, implies a specific interpretation and adaptation of the democratic principles that inspire the political reforms, leading to unintended consequences of external influence (Delcour, 2017).

On the other side, it is important to keep in mind that the features of informal and neopatrimonial networks are influenced by the institutional framework (as decentralization and state capacity) and by historical legacies (Hale 2015). Therefore, research on the interaction of domestic and international actors in political reform processes needs to be contextualised in the broader formal and informal institutional framework in order to reflect all its nuances.

### ***DEMOCRATIC QUALITIES OF HIBRID REGIMES***

Recent research on the combined interaction between political institutions, informal neopatrimonial networks and external actors has focused on area-specific policy change (food safety and migration policy) (Delcour 2017). The analysis of processes of democratic deepening through institutional change is what differentiates the present research from previous studies. Therefore, the choice of institutional change is based on its relevance for the redefinition of system-wide domestic structures (Cowles, Caporaso and Risse, 2001).

The empirical analysis of democratic qualities is a gradual approach towards the assessment of the evolution of hybrid regimes. Therefore, it provides greater depth and more detailed understanding of the content and actual functioning of the domestic institutions. Connectedly, the analysis of the democratic dimensions of the political regimes in the EU-Russia shared neighbourhood provides key insight for understanding the dynamics that hold political regimes in the region trapped in the grey zone of hybrid regimes.

In order to make such study possible, Leonardo Morlino has developed an analytical tool that analyses the political dimensions of what could be considered as a good democracy (Morlino, 2011: 206). Similar research has been performed in the framework of the EUCLIDA project which focused on the interaction between domestic and international (EU) anchoring in the field of Rule of Law in Serbia, Ukraine, Romania and Turkey (Magen and Morlino, 2009). This analytical tool covers the following democratic qualities:

- **Quality in terms of procedure** would include five dimensions - 1) Rule of Law; 2) Electoral Accountability; 3) Inter-Institutional Accountability; 4) Political Participation; 5) Political Competition. These five dimensions study the compliance with the rules and norms of the decision-making and implementation processes;
- **Quality in terms of content** cover the dimensions of Freedom and Solidarity/Equality, which reflect the political, civil and social rights. These rights are the basis of several normative definitions, as liberal representative democracy, responsive, deliberative, associative, egalitarian democracy, or good democracy.
- **Quality in terms of outcome** refers to the responsiveness of the government. And more specifically, “the capacity of government to satisfy the governed by executing its policies in a way that corresponds to their demands” (Morlino, 2011: 206).

The satisfactory performance in all these dimensions would indicate a very good quality of democracy. It would also provide insight on the democratic deepening, which is defined as “the process of developing what in different normative perspectives are considered the qualities of a democracy” (Morlino, 2011: 191). The normative model used as a basis for this analytic tool is good democracy conceived as “a stable institutional structure that realizes the liberty and equality of citizens through the legitimate and correct functioning of its institutions and mechanisms” (Morlino, 2011: 42). This broad definition allows the researcher to increase the conceptual differentiation by redefining attributes and narrowing down in the categorisation of more specific sub-type of democracy (Collier and Levitsky, 1997).

Another strength of this tool is that it covers the whole process of policy-making, including decision-making, implementation and internalisation (Munck, 2014). Other definitions of democracy provide more limited coverage of policy-making processes, as for instance the definitions provided by Lijphart (2009 quoted in Munck 2014) and Roberts (2009) and Levine & Molina (2009, quoted in Munck 2014).

#### **IV. CONTRIBUTION TO THE LITERATURE**

The present research contributes to the literature through the examination of the interplay of domestic and external influence by two regional powers (the EU and Russia) on political reforms, taking under consideration the presence of both formal and informal institutions. Given that similar research has been performed mainly in the field of sectoral cooperation (Delcour 2017), this study will focus on fields directly linked with the democratic consolidation and deepening of democratic qualities. The analysis of the contribution of

institutional reform processes for the democratic deepening defines a broader field of the present research, as it goes beyond the analysis of area-specific policy structures and directly touches upon system-wide domestic structures (Cowles *et al.*, 2001). Therefore, the present research has a broader focus and covers aspects as state-society relationships, contrary to previous studies in the field. Due to this reason it is expected that the interaction between external influence and domestic structural change will be guided by different mechanisms with varying outcome. In addition, democratic deepening is considered as a priority sector for the Political Science research, due to its centrality for the political system.

However, it is worth considering that the limited research in this field (Ademmer, 2017) might indicate more difficult access to empirical data or more complex measurement of the influence exerted in comparison to the sectoral cooperation. For instance, Schimmelfennig emphasizes the problem of attribution to the EU of the impacts on domestic reform processes. This difficulty becomes greater “the less EU-specific the rules in question and the less dense the institutional relationship between the EU and a third country are” (Schimmelfennig 2012: 11). Therefore it is expected that the EU influence will be more difficult to trace, when it refers to a principle supported by other Western non-EU democracies and when other institutional actors as the Council of Europe or OECD are involved.

Similar constraints are expected to be compensated by the identification of key variables that link domestic formal and informal institutions with external influence, as well as by the careful selection of key reforms that illustrate in transparent way the domestic struggles involved in the reform process, in parallel to the external influence exerted by the EU and Russia. In addition, in order to clearly identify those cases in which the EU democracy promotion is supported by other international organisation a specific analytical category for ‘networked’ external influence mechanism will be identified. In this way it will be possible to separate the EU actions from those of other international organisations.

Secondly, the focus on external governance and specifically on sectoral norm-diffusion in Europeanisation research might also reflect the increasing share of EU investment in this field. This trend is partially due to the introduction in 2009 of a deeper contractual framework between the EU and the countries from the Eastern Partnership (EaP) – Association Agreements and Deep and Comprehensive Free Trade Agreements – which requires norm and standard harmonization between the two parties. Besides, in compliance with the principle of differentiation the EU has opted for strengthening, through external governance, the

relationship with those EaP countries that are not interested in adopting contractual relationship with the EU – as Belarus. Consequently, it is possible that the academic interest in issue-specific policies is guided by the actual trends of the EU external policies.

In addition, the present research is expected to contribute to the literature with what Delcour identified as a next step in the research on domestic reform processes -“an in-depth analysis of the constellation of actors engaged in the policy transfer process” (Delcour, 2017: 166). Similar analysis is important, due to the need to understand the role of domestic actors, beyond the political elites, and reflect on the role of overlapping formal and informal institutions. Furthermore, this study of the domestic actors will be embedded in the analysis of institutional reform processes, which will allow to explain the different dynamics between domestic (formal and informal) and international actors. From a more policy-oriented perspective, the detailed analysis of the different domestic actors and their interaction with international external influence in domestic political reforms, is expected to make possible the advancement of specific recommendations, regarding the conditions that will facilitate the empowerment of reform-oriented actors.

In conclusion, the focus on democratic political change and the detailed analysis of the domestic constellation of actors and their role in the interaction with two external actors (EU and Russia) as part of structural change processes is expected to provide a more complete understanding of the intertwining influences and dynamics involved. This research fills the gap in the research with relevant and policy-oriented insight regarding the interplay between domestic and international actors and their contribution to the negotiation, adoption, adaptation and implementation of democratic reforms in the EU-Russia shared neighbourhood.

# ***CHAPTER 2. RESEARCH DESIGN***

## **I. THEORETICAL APPROACH**

The main goal of this research is to explain how external actors successfully influence political reform processes in hybrid regimes. For this purpose, this study will trace the influence of external actors on domestic reform processes and will assess their significance for democratic deepening. This chapter will present the theoretical framework and research design developed for this purpose. Firstly, the theoretical approaches chosen will be briefly described. Secondly, this chapter will discuss the democratic dimensions that will serve as an analytic basis for the study of the domestic political reforms. Thirdly, the research design, including the explanatory variables and the hypothesised processes will be developed in detail. And lastly, the methodology used for this purpose is presented.

This research combines an analytical tool for studying democratic qualities with theoretical contributions from social constructivism and historical institutionalism. Following the claim for problem-driven research, it is assumed that the social and political forces that operate in the EU-Russia shared neighbourhood can be accurately explained through a combination of variables that reflect utility maximization, socialization dynamics and discursive practices. This framework is based on the understanding that the clear differentiation between rational and non-rational elements will be better defined as a continuum of human action (Risse 2002b). In addition, this research emphasizes the need to contextualise the actions, preferences and identities of domestic actors in a broader historical perspective, which acknowledges the relevance of Soviet legacies and the continuity of path-dependencies, originating in the previous communist regime and its demise. Historical institutionalism has only limited impact on the ENP Europeanisation literature (Delcour 2017). Therefore, this theoretical framework is expected to bring new perspective on the research of hybrid regimes in the EU-Russia shared neighbourhood.

Firstly, due its focus on state-society relationship, **social constructivism** is considered as an appropriate approach that facilitates the analysis of system-wide domestic structures. More specifically, the concept of limited statehood introduced by Thomas Risse (Risse, 2011) and the analysis of state-in-society relations advanced by Joel Migdal (Migdal, 2001) are considered to provide complementary perspectives on the interaction between state and society.

Both authors recognize that in the present state and non-state actors, as well as public and private spheres cannot be separated as neatly as it was possible in previous historical periods.

On the one hand, Risse considers that the complementary and even coordinated action of public and private agents bridges key gaps in the state capacities to provide governance.<sup>2</sup> According to his definition governance in limited statehood covers “the various institutionalised modes of social coordination to produce and implement collectively binding rules, or to provide collective goods” when the state lacks the required capacities for this (Risse 2011: 9). On the other hand, the “state-in-society” approach of Joel Migdal (2001) depicts a “*melange* of social organisations”, which is dominated by the struggle between different organisations to influence the rules of the game established by state institutions (Migdal 2001: loc 609). Therefore, Migdal’s conflict-centred conceptualisation of state-society relations complements the more cooperative perspective provided by Risse.

Secondly, **historical institutionalism** focuses on the “construction, maintenance and adaptation of institutions” (Rhodes et al. 2006: 42), while “political actors [are seen] as objects and agents of history” (Steinmo et al. 1992: 10). In addition, as in social constructivism, the pursuit of rationally-defined goals on the basis of cost-benefit calculations, is considered as a complementary motor for human behaviour together with normative reasoning. Stefes, in his research on the interaction of formal and informal institutional in Armenia and Georgia, clearly illustrates this double rationality in the foundations of historical institutionalism. He argues that newly created institutions are followed due to rational considerations, while their long-term existence is expected to strengthen the logic of appropriateness as a result of habituation. However, if these institutions stop providing a minimum level of rewards, a reversal to the logic of consequentialism might take place and they might be weakened or even abandoned. In such situations, state officials might act in contradiction to the objectives pursued by the government. Similar behaviour of the bureaucrats would indicate the presence of social actors or informal institutions that shape their interests and preferences in a way that conflicts with the positive performance of the state (Stefes, 2006b).

Consequently, this theoretical framework intends to reflect the salience of historical legacies and persistent path-dependencies originating in the Soviet system and its demise.<sup>3</sup> For

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<sup>2</sup> According to the definition provided by Risse (2011: 4) limited statehood refers to “parts of a country in which central authorities (governments) lack the ability to implement and enforce rules and decisions or in which the legitimate monopoly over the means of violence is lacking, at least temporarily”.

<sup>3</sup> Path-dependency implies that the “trajectory of change up to a certain point constrains the trajectory” and the range of possibilities for a new strategic choice after this point (Rhodes et al. 2006: 64).

instance, the consequences of blurring the boundaries between state and society, which was pursued by the Soviet Communist Party can be traced even in the present (Shahnazarov 1974: 45; 56-59 quoted in Chirot 1980: 368). Guided by control rationality, the Soviet totalitarian state exercised negative power against any autonomous regulatory social mechanism. However, the limited capacity of the state to intervene and regulate all aspects of the social and economic life led to its loss of control over certain domains. In order to remedy these negative effects, it made use of “neopatrimonial strategies of incorporating those it was unable to subordinate to its own rule into its own structures” (Koehler & Zürcher 2003: 195). The growing involvement of neopatrimonial trends in the Soviet structure, diverted resources towards individual members of the Party and blurred the public - private boundaries.

In the 1990s, the post-Soviet networks adapted to the new political reality, as they evolved towards modernized neopatrimonialism, based on “private appropriation of the elites of the public realm and electoral benefits” (Fisun 2012: 91). Consequently, in the present, informal networks of business elites distribute key resources in parallel to the formal modern state institutions. In this context, the political struggle for different ideological or policy alternatives is substituted or paralleled by a competition between different neopatrimonial factions for the control over key resources, positions or segments of the public administration (Fisun, 2011).

**Post-Soviet literature** provides specific example of this co-existence and mutual influence between formal democratic institutions and informal neopatrimonial dynamics. For instance, the constitution is transformed into a mechanism that “help[s] structure the way all these networks arrange and rearrange themselves”, which illustrates the prioritization of informal over formal incentives and/or norms (Hale 2015a: 10). For instance, in a presidential political system their main goal is to control the president’s position, while in parliamentary systems, as in Moldova, their purpose is to influence the legislative body.

Hale (2015) also argues that the ‘colour revolutions’ have been developed and used by these networks as an instrument for power struggle. Elites ‘become democrats’ and after the incumbent political leader is replaced, a disappointing regression towards patronal politics takes place with the only difference that a new leader has the control over formal and informal political institutions (Fisun, 2012; H. E. Hale, 2015a). Stefes explains the process, through which corruption affects the long-term calculations of the members of informal networks. The negative effects of certain laws for the future perspectives to increase their wealth or power, might predefine their position on it. As Stefes claims such strategic calculations may lead

“politicians and bureaucrats [to] conspire in passing and implementing cumbersome, contradictory, and/or ambiguous regulations and laws that induce citizens to pay bribes to avoid them” (Stefes 2006: 23; Hellman 1998).

To summarise, on the basis of post-Soviet literature, it is possible to hypothesize that the following Soviet legacies and post-Soviet institutions and practices coexist in the present: blurring boundaries between state and society, as well as between public and private interest; the presence of neo-patrimonial informal networks and their instrumental use of the formal institutional framework; a weak civil society and top-down party structure with weak social roots (Koehler and Zürcher, 2003; Schimmelfennig, 2005; Fisun, 2012; H. E. Hale, 2015a).

The social constructivist analysis of the struggle between different actors and groups to influence state institutions will be complemented by a historical institutionalist perspective on political and institutional change (Mahoney and Thelen, 2006). On this theoretical basis, it is considered that the interaction between formal and informal institutions is mediated by actors’ agency, which on its side influences the democratic quality of the political reforms undertaken by domestic elites in Armenia, Georgia and Moldova. Consequently, it is emphasized that a clear understanding of the interaction between incentives and norms embedded in both formal and informal institutions would make possible to understand the relevant processes that influence democratic deepening.

Its focus on the interaction between private and public domains and their contribution for democratic deepening is what situates the present research in the system-wide domestic structures (Cowles et. 2001). This perspective is reinforced by the understanding that the democratic institutional reforms imply a redistribution of power, which goes beyond the economic benefits and losses that a reform of sector-specific policy structure might have. Therefore, I argue that significant democratic reform processes imply a redistribution of power and wealth that has the potential to affect the private-public relationship in the post-Soviet system. Similar implications might motivate domestic actors to defend their current power positions through watering-down the significance of the democratic reforms, reinforcing the authoritarian features of the hybrid regimes. Given this potential significance of democratic deepening, the next point will discuss the main democratic dimensions that will illustrate the institutional reforms and the interaction between state and society in the post-Soviet context.

## II. DEMOCRATIC QUALITIES

The analytic tool for studying democratic qualities, defined by Morlino (2011) allows to deepen the research of structure-wide reforms, going beyond the procedural dimensions and capturing their content and final outcome in terms of responsiveness. This research will take as its basis the analysis of institutional reforms in three procedural dimensions, in order to illustrate the interaction between state and society. Specifically, three reform processes in the fields of Rule of Law, Electoral Accountability and Interinstitutional Accountability are selected. In order to understand the dynamics of state-society interaction, the dimensions of Political Participation and Competition are presented as horizontal to these three reform processes. In addition, the outcome of these reforms in terms of freedom and equality are analysed in order to provide a more complete overview of the dynamics taking place in the political system. This point will introduce the way, in which these procedural and content dimensions will develop, taking under consideration the interrelations between them. The three procedural dimensions used for the selection of case studies of institutional reform processes are Rule of Law, Interinstitutional Accountability and Electoral Accountability.

### *INSTITUTIONAL DIMENSIONS*

- **Rule of Law** is considered as the cornerstone, on which all dimensions of democratic governance depend (Magen & Morlino 2009). This dimension invokes the supremacy of law and implies “the capacity, even if limited, to make authorities respect the laws, and to have laws that are non-retroactive, publicly known, universal, stable and universal” (Morlino, 2011: 196). Therefore, Rule of Law is considered as a fundamental requirement for any political system and for democratic consolidation. The sub-dimensions of Rule of Law are Individual security and civil order; Independent judiciary and modern justice system; Institutional and administrative capacity to formulate, implement and enforce the law; Effective fight against corruption and Security forces that are respectful of citizen rights and are under civilian control. This dimension is central for what Stephan Krasner defines as “domestic governance” - “the formal organisation of political authority within the state and the ability of public authorities to exercise effective control within borders of their own polity” (Krasner 1999 quoted in Risse 2011: 3). On the contrary, the lack of capacity of the state to implement and enforce rules and

decisions will be reflected in what Thomas Risse defines as the ‘limited governance’<sup>4</sup>. However, as Risse argues, governance is still possible in contexts of limited statehood, due to the diverse modes of social coordination, which involve social or political actors in the production of collectively binding rules or the provision of collective goods (Risse 2011: 9).

Consequently, it is key to identify the sub-dimensions of Rule of Law that present the conditions of limited statehood, which leads to social coordination for the provision of governance. Such case-study is expected to illustrate the coordination or struggle between social and political actors, as understood by Thomas Risse and Joel Migdal respectively. Among the sub-dimensions of Rule of Law, reform processes in the fields of Independent judiciary and effective fight against corruption can provide illustrative case-studies in the sense described above. The independence of the Judiciary in post-Soviet systems has been a key challenge, due the continuity of certain legacies, embedded in the principle of “unity of state power, coupled with the ideological dominance of a single party parliament” (Rakic-Vodinelic et al. 2012: 15). The fight against corruption presents similar obstacles, given the blurring boundaries between state and society under the influence of powerful neopatrimonial networks.

The case studies selected for their analysis in the field of Rule of Law are the following:

- ***Armenia - Strategic Programme for Legal and Judicial Reforms (2012-2016)***. This specific field is supported by an EU-Council of Europe Project - “Strengthening the Independence, Professionalism and Accountability of the Justice System in Armenia”.
- ***Georgia – National Anticorruption Strategy and Action Plan (2015-2016)*** This specific reform was initiated in 2014 and amendments of the Law on the Prosecutor’s Office were made in 2015. This reform process is supported by the Council of Europe, in particular, through the Venice Commission and by other international and national partners such as the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the US Department of Justice, USAID, the European Union, local NGOs, etc.
- ***Moldova – The reform process since the adoption of the Justice Reform Strategy for 2011-2016 and the Concept on Reforming the Public Prosecutor’s Office*** adopted by Parliament in Law No. 122 of July 2014 (2011-2016).
- ***Interinstitutional accountability*** is “the responsibility governors have to answer to other institutions or collective actors that have the expertise and power to control [their] behaviour”

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<sup>4</sup> According to the definition provided by Risse (2011: 4) limited statehood refers to “parts of a country in which central authorities (governments) lack the ability to implement and enforce rules and decisions or in which the legitimate monopoly over the means of violence is lacking, at least temporarily”.

(Morlino, 2011: 199). In practice this aspect is relevant for analysing the balance of power between different institutional actors and, more specifically, the control exerted by other institutional actors on the executive. It is suggested that accountability comprises three features– “information, justification and punishment/compensation” (Schedler 1999 quoted in Morlino 2001: 198). The relevant sub-dimensions of this democratic quality are legislative-executive relations, the work of the Constitutional or Supreme Court, the ombudsman, the provision of plural and independent information and the modes and extent of decentralization. Similarly to the previous dimension, interinstitutional accountability guarantees the effectiveness of the checks and balances between different democratic institutions. Interinstitutional accountability depends on the dimension of Rule of Law. In addition, it is closely linked to competition and participation, as it requires the presence and effective functioning of intermediary structures as political parties, civil society organisations and media. The deepening of democratic qualities in the post-Soviet context probably will be affected by the legacy of strong, personalist presidential system that dominates the other institutional branches. In addition, the hypothetic connections between the formal institutional structure and informal neopatrimonial networks are expected to weaken the reform processes in this field. As a consequence, the internal dynamics of the accountability are expected to illustrate the struggle between democratic and autocratic trends in the societies considered.

The case studies selected in the field of Interinstitutional Accountability are the following:

- ***Armenia - Fundamental amendment of the Constitution that changed the system from semi-presidential to parliamentary (2013 – 2016)***. In September 2013 a specialized Commission for Constitutional Amendments was established, and the amendment was adopted in December 2015. This process is connected to the electoral reform developed afterwards and implemented after the end of the Presidential term in 2018 and the subsequent Parliamentary elections in 2018.
- ***Georgia - Reform from presidential to parliamentary system (2008-2014)***. The reform started in 2010 and entered into force after the presidential elections in October 2013. However, the debates about the reform started in 2008. In addition, the implementation of this reform over 2014 is also considered to be important, as some analysts argue that Ivanishvili still controls the government and that the Parliament is not strong enough.
- ***Moldova – Reform from a presidential to a parliamentarian system (1999-2000)***. This reform was initiated by the president with the aim of strengthening his power, but the Parliament achieved broad agreement on a change to a parliamentary system. However, in 2016 the Constitutional Court

declared the 2000 reform as unconstitutional and re-established citizens' elections as means for electing the president (Calus 2016).

- **Electoral accountability** is concerned with one of the main elements of minimalist democracy. In contrast to interinstitutional accountability, electoral accountability is periodic and involves politically unequal political subjects – governors and governed. The sub-dimensions included in this field are the celebration of free, fair and recurrent elections, the freedom of party organisation and the presence and stability of actual political alternatives. These sub-dimensions denote a dependence on the political competition in the country. Important aspects that need to be considered are the distribution of power in the parliament, the alternation between different political forces and the actual possibilities to be elected.

Post-Soviet literature emphasizes some of the most relevant aspects in the region, as the presence of dominant parties with strong personalist element. The highly fragmented and loyal to the president opposition is frequently linked with the instrumental introduction of proportional system after a long period of majoritarian system in the first years of the transitions (Turovsky 2011: 203). Therefore, given this personalist traditions and the unstable party system and opposition, it is considered interesting to analyse the way in which the dimensions of political participation and competition interact with the electoral norms. Such aspects would be the reforms of the electoral system from majoritarian to proportional and vice versa.

The case studies selected in the field of Electoral Accountability are the following:

- **Armenia - New electoral code adopted on 25 May 2016 introduces a change from mixed electoral system to proportional system (2015-2018)**. It is linked to the constitutional reform adopted in December 2015 and its effects were observed in the 2017 Parliamentary elections. This process partially will overlap with the Constitutional reform from 2015, but will be extended until May 2016, when the Electoral Code was adopted and will consider its consequences on the 2017 elections. The effects of the electoral reform and of the Constitutional amendment are expected to reflect strongly on April 2018 Presidential elections. Critiques argue that this reform formally codifies “electoral rules to ensure that one party has a stable parliamentary majority” (Partlett 2016: 89).
- **Georgia - Constitutional reform of the electoral system (2015-2018)** covers from 2015 when Civil Society Organisations (CSO) and the opposition advocated for a reform; to 2016 during the discussion of two proposals for Constitutional amendments and its adoption in 2017. Still in 2018 it was expected to include the recommendations of the Venice Convention. In principle it was supposed to shift from a mixed system to fully

proportional one, but this change was postponed for 2022 and strengthened certain majoritarian components as is the bonus system of allocation of all undistributed seats to the winning party.

- *Moldova – Electoral reform from a fully proportional system to a mixed (2016-2018)* that was adopted in July 2017. It was followed by controversial debates and opposition against it, due to its effects on the Parliamentary elections of November 2018. It is important that two different electoral systems will have been used in these two elections (Presidential 2016 and Parliamentary 2018).

### ***HORIZONTAL DIMENSIONS***

The dimensions of political competition and participation are “at the core of the analysis of qualities”. They are considered the “engines of democracy and of other qualities”, as they “link the other procedural qualities with the contents of a democratic regime that are translated into decisions and specific policies” (Morlino 2011: 237-238). In order to capture the interaction between state and society, these two dimensions will feed into the analysis as horizontal dimensions. Such perspective will provide insight on the dynamics of interaction between social actors and institutional framework, through the explanation of how the changes in the trends of participation and competition influence the reform processes in the institutional dimensions (Rule of Law, Interinstitutional and Electoral accountability).

**Political participation** is a central element of democratic deepening and has been defined as “the entire set of behaviours, be they conventional or unconventional, legal or borderline vis-à-vis legality, that allows women and men, as individuals or as groups, to create, revive, or strengthen group identification or to try to influence the recruitment of, and decisions by, political authorities (the representative and/or governmental ones) in order to maintain or change the allocation of existing values” (Morlino, 2011: 196). The analysis of this dimension includes the rights of and opportunities for participation, including electoral participation. In addition, the different mechanisms for conventional (parties and associations) and unconventional participation, and other possible deliberative arenas are considered.

Similarly, **political competition** is defined as the possibility of more than one political actor to be involved in political decision-making. The relevant sub-dimensions of political competition are electoral success of small parties; the opposition vote share; the fragmentation of the party system and the effective alternations between political parties (Morlino, 2011). However, this research will complement these sub-dimensions with a more qualitative analysis

of the social and political dynamics involved in the domestic decision-making. It is, thus, possible to study the state-society relations through the analysis of the “recurrent ways in which elites and citizens consciously or otherwise try to subvert those qualities for their political or private purposes” (Morlino, 2011: 23).

From a constructivist state-in-society perspective, the institutional framework defines the features of domestic anchoring. In parallel, key social actors, as political parties, professional associations and neopatrimonial networks would seek to influence and change the legislation that regulates the institutional framework, the national distribution of resources and the conditions for social participation. The capacities and strategies for influence adopted by these actors will be essential for their impact on the decision-making process and their outcomes in terms of regulatory and institutional framework. Therefore, the internal dynamics and social struggles that take place in reform processes are expected to provide a more complete understanding of the interactions between social and institutional aspects of the political system. Consequently, together with participation, these will be the key dimensions for understanding the functioning of state institutions and the influence exerted on them by social groups. In addition, following previous research in the post-Soviet region, the involvement of neopatrimonial networks, will be also reflected in the study of hybrid regimes (Gel'man, 2003).

#### ***FREEDOM AND EQUALITY AS SUBSTANTIAL DIMENSION***

The analysis of the implications of the political reforms for citizens' freedom and equality complement the analysis of the procedural dimensions with insight on the substance of democracy. Freedom and equality are essential part of many normative definitions of democracy. Freedom reflects the guarantees to personal dignity and the effective access of citizens to the exercise of civil and political rights. More specifically, political rights include the right to vote, the right to “compete for electoral support and the right to be elected to public office” (Morlino, 2011: 220). Civil rights comprise “personal liberty, the right to legal defence, the right to privacy, the freedom to choose one's place of residence, freedom of movement and residence, the right to expatriate or migrate freedom and secrecy of correspondence, freedom of thought and expression, the right to an education, the right to information and a free press, and the freedoms of assembly, association, and organization, including political organizations unrelated to trade unions” (Morlino, 2011: 221). A broader description of these rights would include also the civil-economic rights, as “rights to private property and entrepreneurship, rights associated with employment [...] ,the right to fair pay and time off, and the right to collective bargaining” (Morlino, 2011: 221).

In addition, equality focuses on “social, economic and cultural rights” and the “allocation of economic resources within the population, the diffusion of education, the size of poverty ...” (Morlino,

2011: 220). Essential for the study of this dimension is the assessment of the existence of “high concentration of resources and widespread poverty” (Morlino, 2011: 220). Research on these aspects in post-communist countries has shown that “economic reforms [in the 1990s] have tended to produce highly concentrated gains to particular groups, while dispersing the costs of reform throughout the economy” (Hellman 1998: 18). The relative insulation of governments from electoral pressures have increased their stakes to “preserve those gains by maintaining the imbalances of partial reforms over time” (Hellman 1998: 18). As post-Soviet literature indicates these partial economic reforms and the lack of political participation of all groups (mainly the losers of the reforms), leads to state capture by entrenched oligarchic groups. Their effective control over the policy-making process implies a specific case of extreme inequality, where elite groups limit the access to political participation and competition (Hellman 1998; Tudoroiu 2015). Such cases of extreme inequality due to corruption or state capture will be the main focus of the analysis of this substantive dimension.

The analysis of the development of these rights involves the consideration of the guarantees that are provided in their support, including the equal and secure access to justice and to political participation. The goal is to understand to what degree citizens are provided with the legal and institutional basis for a significant exercise of these rights. This implies the need to study the implementation and institutional development of the reform processes considered, as these institutional guarantees are part of the implementation of the procedural dimensions. Given the dependence of the substantive dimension on procedural aspects, the considerations of the actual content of the civil, political and social rights will be analysed in parallel to the procedural dimensions. This research will study if the reforms analysed lead to the lack of compliance with a specific procedure, which on its side implies a reduced possibility for the citizens to exercise their rights.

In conclusion, the way in which political, civil and social rights are developed in the legislative framework and implemented in the domestic context, defines the degree to which they are guaranteed. Therefore, the chosen analytic tool covers the whole process of policy-making, including decision-making, rule adoption and implementation (Munck 2014). Furthermore, the degree and the specific direction in which these rights are developed, has significant implications for the model of normative democracy that the institutional framework embodies. For instance, when specific mechanisms for direct participation and election are implemented, the participatory elements of the democratic model would predominate over the representative ones. As this example illustrates, the analysis of the substantial democratic dimensions is relevant not only from the perspective of democratic guarantees, but also for understanding the normative model of democracy that inspires the political system.

### ***ANALYSIS OF THE DEMOCRATIC QUALITIES***

The previous three subsections have described the way in which democratic qualities are analysed at the domestic level. Before introducing the analytical framework for the external influence of the EU and Russia, a brief summary of all the dimensions that are considered at

the domestic level is presented. The table below illustrates the way in which the democratic quality dimensions are analysed in the case studies chosen. It is important that this study will be performed for the three countries – Armenia, Georgia and Moldova. This structure implies that the analysis is divided in three big Chapters focusing on the three procedural dimensions (Rule of Law, Interinstitutional accountability and Electoral Accountability) with country-specific subsections that focus on the horizontal dimensions.

<b><u>Vertical dimensions</u></b> <b><u>Horizontal dimensions</u></b>	<b><i>RULE OF LAW REFORM</i></b>	<b><i>INTERINSTITUTIONAL ACCOUNTABILITY REFORM</i></b>	<b><i>ELECTORAL ACCOUNTABILITY REFORM</i></b>
<b><i>SOCIAL PARTICIPATION</i></b>			
<b><i>POLITICAL COMPETITION</i></b>			
<b><i>FREEDOM</i></b>			
<b><i>EQUALITY</i></b>			

### III. THEORETICAL FRAMEWORK

Following the theoretical approaches chosen for this research, domestic reform processes are conceived as spaces for cooperation and/or struggle for influence over the process and outcome of political reforms. As it was described above, the theoretical approaches suggested by Migdal (2001) and Risse (2011), as well as the post-Soviet literature (Stefes, 2006) provide the justification for situating at the centre of this research, the interaction between state and society, as well as between formal and informal institutions.

In order to analyse the interaction between reform processes and external influence, this research will trace the formation of the domestic actors' behaviour, distinguishing between the contributions of arguments with normative and rationalist basis.<sup>5</sup> Following the logic of arguing, actors recur to both normative and rationalist arguments with the purpose to reach “a communicative consensus about their understanding of a situation as well as justifications for the principles and norms guiding their action”, which would imply an agreement on commonly accepted behaviour (Risse 2000: 7). Connectedly, it is understood that external actors recur to cost-benefit or/and normative logic to influence domestic actors. Consequently, the identification of the underlying logic of actors' behaviour will provide the basis for uncovering

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<sup>5</sup> Democratic norms in post-Soviet hybrid regimes might not always have such a level of consolidation which would allow them to be seen as an internalized motor for the behavior as the logic of appropriateness is seen by March and Olson (March, J.G. and Olsen, 1989). However, it is assumed that domestic actors effectively use normative and rationalist arguments in the process of arguing over the situations they deal with and the behavior to be adopted (Risse 2000: 7).

the causal mechanisms that mediate between external influence and domestic reform processes. The analysis of the preferences, roles and actions of social and political actors will be performed on the four levels of domestic reform processes – rule selection, adoption, implementation and internalization. The purpose of the study is to reflect the domestic legacies and the evolution of actors' positions during the reform processes.

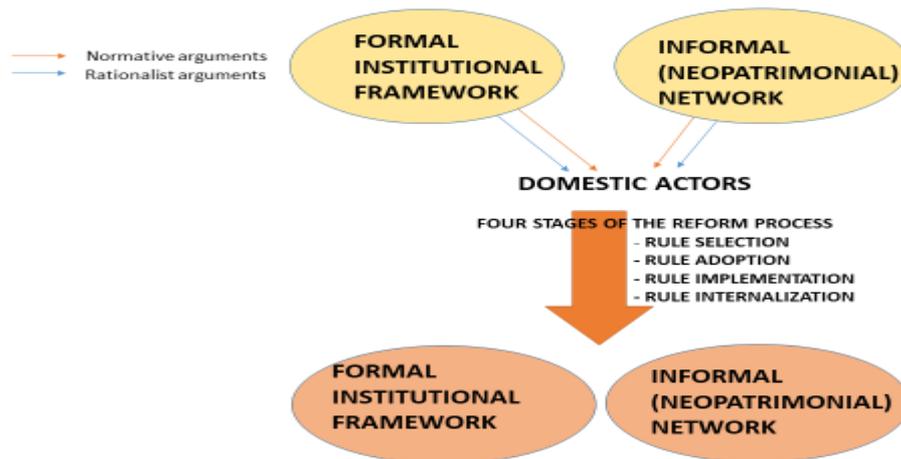
The explicit differentiation between selection, adoption, implementation and internalization of democratic reforms is based on the need to identify the levels at which domestic and international actors intervene. For instance, the initial support of domestic and international actors of the adoption of the reforms does not necessarily imply their continuity towards implementation. In addition, the internalization of the reforms denotes a certain level of reflective use of the norms, which implies that no alternative informal practices lead to rule avoidance or obstruction. These levels of reform processes will make possible to detect unsatisfactory cases, in which democratic norms are adopted and formally implemented, while the intended impact on practices is not achieved or is countered by alternative frameworks. An illustrative example of similar practice is provided by the manipulation of the electronic system for random case allocation in the Judiciary. Where this practice has been reported, reforms are adopted and implemented down to the most technical level. However, due to overlapping informal goals, no real impact was achieved at the level of everyday practices. This example clearly illustrates why it is relevant for this study to consider also the level of internalization.

In addition, the analysis of the normative and rational basis of domestic actors' behaviour needs to reflect the actors' parallel belonging to both formal and informal institutions. It is, thus, important to acknowledge the possible contradiction or complementarity between norms, identities and incentives invoked by the formal institutional framework, on the one hand, and informal networks, on the other. Connectedly, actors' choices and behaviours at the four reform stages, described above, are shaped by these different institutional settings. Such analysis of the influence of formal and informal institutions will make possible to understand the opportunity structure and the identities of domestic actors.

The use of historical institutionalism in this research addresses the need to reflect the contradictions between formal and informal institutions. From this perspective informal neopatrimonial institutions take precedence over the formal ones, as they are very resistant to "changes in the environment and deliberate attempts to transform or eliminate them" (March and Olsen, 1984 quoted in Stefes 2006: 2). The analysis of how formal and informal institutional input shape actors' behaviour goes beyond the classical differentiation of logic of appropriateness and of consequences, through its multiplication on two levels.

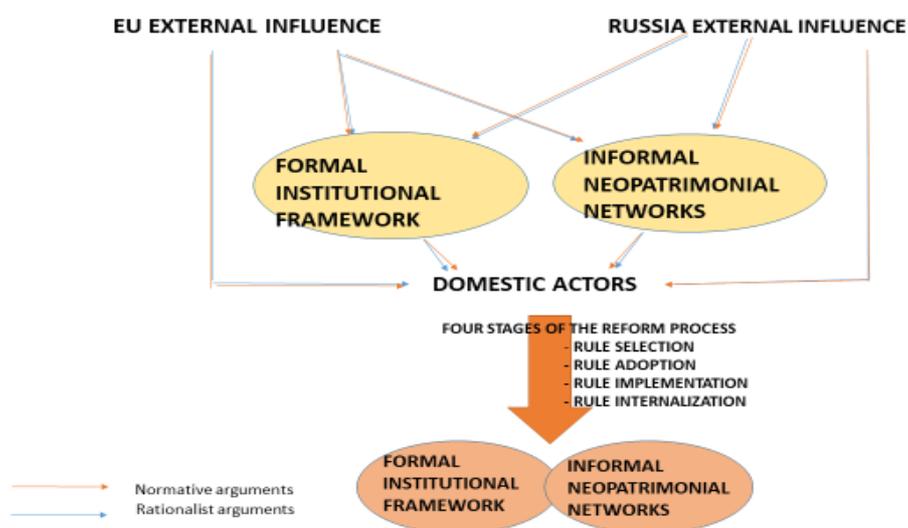
Figure 1 below illustrates the way in which it is hypothesized that formal and informal domestic networks exert influence through the argumentative logic of truth-seeking with the contribution of both normative and rational statements, if no external actors' influence was considered. The outcome of such a deliberative interaction would be a communicative consensus between the domestic actors (Risse 2000). This is a hypothetical position which focuses only on the dynamics in the domestic context.

Figure 1. Domestic influence system



Such analysis of the dynamics taking place at the domestic level was performed at the first stage of the present research. The tracing of the external influence exerted on the domestic context and actors was analysed at a second research stage. Figure 2 below how the interaction between international and domestic actors is conceived. This figure shows that external actors can directly reinforce or weaken **domestic formal and informal institutions**. In addition, they can also empower or disempower **domestic actors** in order to strengthen/weaken their capacities for shaping domestic reforms. In the second possibility, behaviour of domestic actors mediates between external influence and domestic reforms. For this purpose, it is important to differentiate between external action based on the normative arguments or on rational statements. The external influence mechanisms are based on the models defined in the previous chapter (p. 11 Chapter 1). More specifically, they are imposition, conditionality (active leverage model); socialisation (linkage model); argumentative truth-seeking (partnership); emulation and external governance.

Figure 2. Interaction between domestic and international actors



Even though domestic actors' behaviour and decisions have significance and affect international agents, this study will not focus on this aspect. Therefore, this research will focus on the influence exerted by external actors on domestic institutions and actors. In addition, the change in domestic actors' preferences and identities under the pressure of domestic or external influence might take place during any of the stages of the reform process (norm selection, adoption, implementation or internalisation). Furthermore, change in preferences and/or identity as part of the internalisation process is inevitable. The specific interactions between domestic and international actors and frameworks will be analysed through process-tracing and network analysis. With the purpose of clearly differentiating the mechanisms involved at domestic and international level, several explanatory variables will be analysed with reference to the theoretical approaches that inspire them.

### ***EXPLANATORY VARIABLES***

The main goal of this research is to explain how external actors influence political reform processes in hybrid regimes. For this purpose the dependent variable is defined as **selection, adoption, implementation and internalization of political reforms that deepen the democratic qualities of the political regimes in Armenia, Georgia and Moldova**. This dependent variable guarantees an inside-out perspective of the research and its focus on the domestic context. Therefore, this study will use the democratic institutional reform processes as the basis for tracing the intertwining action of domestic and external actors. In addition, this dependent variable corresponds to the current theoretical constructivist – institutionalist perspective, which opens the possibility to reflect the institutional evolution, while bringing to the front the social and political struggles for influencing its outcome.

The analysis of the interaction between this dependent variable and the explanatory variables will be divided in two analytic elements. The first part of the theoretical framework will focus on the domestic context (see Figure 1) and will include the following steps: mapping of domestic actors that interact and/or influence reform processes; analysis of their preferences and roles in the processes; and assessment of the contribution of these actions and of the outcome of the political reforms for democratic deepening or weakening of the hybrid regimes analysed. The second part of the theoretical framework will trace the influence of external actors (the EU and Russia) on the processes and outcomes of these reforms (see Figure 2). International actors can strengthen the domestic institutions or influence domestic actors. This theoretical structure is expected to contribute for understanding the domestic processes, studied at the first place, and consequently isolate the contribution of the international actors for steering the processes of domestic change in one direction or another. This two-step analysis will be performed on the basis of domestic and international explanatory variables.

#### ***EXPLANATORY VARIABLES CONCERNING THE DOMESTIC CONTEXT***

The domestic actors and institutions are studied through the following explanatory variables.

- ***DV1. (Dis)continuity of the elites and social groups that influence the reforms.***

This research seeks to reflect the historical dimension of the political and social transformations in the countries studied through the analysis of the (dis)continuity of the elites and social groups that are involved in the reform processes. In this framework, **continuity** refers to the persistent presence of political and social actors that have developed their initial positions in the Soviet political system or in the initial phases of the post-Soviet transition. **Discontinuity**, on the other side, denotes the emergence of new domestic actors that have been socialised and are involved in the new political structures built in the framework of democratic transformation. These two concepts refer to the classic distinction between veto players and agents of change and emphasizes their different socialisation and belonging to political institutions with opposed political cultures – autocratic and democratic. However, it is possible that many actors will present a combination of these features as a result of re-socialisation processes and multiple belongings to different organisational structures throughout the different phases of the post-Soviet transition. Consequently, this research will seek to define the behavioural patterns that present continuity or discontinuity with reference to the Soviet system and the transition period. Therefore, domestic actors' initial socialisation (Soviet or post-Soviet), as well as the subsequent process of resocialisation under the influence of formal institutions, informal neopatrimonial networks and external actors will be considered.

Such analysis will seek to uncover past continuity/discontinuity through the study of personal and organisational histories. If, for instance, a specific domestic agent, as Civil Society Organisation (CSO) finds its origins as an arm of the Communist Party or the Soviet State, the process of its adaptation to the democratic institutional framework – the change in its identity, goals and organisational practices - will be considered. In addition, it is important to consider if the CSO is dominated by neopatrimonial practices or is defined by the more or less pervasive presence of corruptive practices that undermine democratic deepening. In addition, the follow-up of the career pathways of the CSO members might provide an interesting input in this aspect. Similar analysis of the evolution of important Soviet legacies as veto players and neopatrimonial networks in the context of the post-Soviet hybrid regimes, will contribute for clarifying the normative motivations for the actors' behaviour in the reform processes.

With the purpose of developing a typology of domestic actors involved in the reform processes, this research will also analyse their resources and capacities both when continuity and discontinuity exists. Similar study borrows from the social movements research, the idea that domestic actors will manage to exploit changes in the opportunity structures depending on “their access to the public sphere and political decision-making” bodies (Kitschelt 1986: 61), as well as their “financial means, information and legitimacy” (Cowles et al. 2001: 12). The analysis of resources and capacities of domestic actors entails several steps. Firstly, the possibilities for participation and expression in the institutional framework will be considered. Secondly, the organisational, financial, ideational resources of the relevant actors will be studied. Lastly, it is important to take into account the network resources available to domestic actors. It will be studied how coalition-building contributes for increasing actors' political and social influence. In the post-Soviet context, it is possible to access relevant information or positions in the institutional framework through individual or collective linkages with informal neopatrimonial networks. Such networking processes might lead to important dependencies between the actors. For instance, the dependence of political parties or CSOs on state resources, as well as their links to business elites or neopatrimonial networks will be considered. These different resources constitute the different aspects of the (dis)continuity of the domestic actors and their relative position in the current social and political system.

This variable represents a three-level analysis of the domestic actors, which includes 1) their opportunities for participation; 2) their access to organisational, financial, ideational resources and information; and 3) their capacities to build relatively stable coalitions and networks. This analysis aims to illustrate the way in which domestic actors interact among themselves and

with the formal political system, while distinguishing between features that represent continuity or discontinuity in relation to the (post-)Soviet framework. In addition, the resources available to them are considered to be key for understanding the strategies they adopt in influencing domestic reforms as well as their interaction with international actors.

This variable reflects the differentiation captured by Schimmelfennig *et al.* (2006) in the conceptualisation of the central role played by the type of domestic party constellation (Schimmelfennig, Engert and Knobel, 2006). It is assumed that the political preferences (liberal vs anti-liberal or mixed, according to Schimmelfennig *et al.* 2006) of domestic actors matter regardless of their momentary position in the system. Political alternation, new incentives structure and differential empowerment of domestic actors may promote the aggregation of social and political actors in support of democratic deepening (Borzelt and Risse, 2000). Therefore, it is important to study the socialisation and preferences of social actors beyond the ruling elite.

On the basis of this variable it is hypothesized that the presence of deep links and continuity of the (post-) Soviet patrimonial networks will be problematic for actors' alignment with reforms that bring democratic deepening. On the other side, actors that have been (re-)socialised in democratic system and values are expected to support in a more persistent way normative-based behaviour and act as agents of change. In addition, it is expected to detect actors that discursively follow normative reasoning, while their actions contradict the norms. In addition to this aspect, among the international variables will be included a more specific analysis of the socialisation efforts developed by external actors (the EU and Russia).

- ***DV2. Resonance and salience of democratic norms with domestically held and institutionalized norms.***

These two variables reveal sociological institutionalist and constructivist efforts to identify those ideas and identity constructions that can be considered as appropriate and relevant in a given context (Cowles, Caporaso and Risse, 2001). It is important to analyse norm resonance and salience in reference to both formal domestic institutions and informal neopatrimonial networks. Informal networks may provide relevant basis for domestic actors to build links of trust and sense of belonging that might be in contradiction with democratic norms. For identifying this aspect, it is important to establish if the democratic or the neopatrimonial norms dominate the institutions or groups analysed.

**Resonance** has been used in Europeanization literature for explaining social influence. High degree of resonance of democratic norms with domestic institutional norms and collective

identities would indicate their appropriateness and legitimacy in a specific context (Cowles et al. 2001: 202). It is, thus, expected that the most resonant democratic norms will create the strongest sense of obligation, “when appealed to in arguing and social influence process” (Schimmelfenning et al. 2006: 23). **Salience**, on the other side refers to “the perceived discrepancy between ‘ought’ and ‘is’” (Schimmelfennig *et al.*: 22). It is expected that discrepancy between democratic norms and political reality will increase the normative pressure for their convergence. In contrast, the lack or low level of salience would indicate the prevalence of cost-benefit calculations or the operation of alternative informal norms.

Previous research allows to hypothesize that these variables are necessary, but insufficient conditions for effective reform implementation. Consequently, it is expected that high resonance and salience of democratic norms will facilitate normative compliance, but will not revert incompliance in the case of negative cost-benefit calculations for the domestic actors (Lavenex and Schimmelfennig, 2009; Delcour, 2017b). In addition, resonance and salience are expected to contribute significantly at the stage of selection of democratic norms, which means that resonant and salient norms will be selected for their adoption.

The role of resonance and salience for norm implementation and internalization require further analysis, as it is considered that positive assessment of these aspects will reduce the adaptational tensions, when the costs of the reforms are high. However, they will not be sufficient to revert negative cost-benefit calculations and guarantee implementation and internalization of political reforms, conceived as detrimental by domestic actors. Therefore, normative aspects as resonance and salience of political reforms are expected to have significant influence when domestic opposition to the reform is low (Kelley 2004: 37).

### ***DV3. Preferential fit***

This variable reflects an agency-centred, rationalist institutionalist account of domestic change. It is defined as the compatibility between the reforms advanced and “the incumbent’s preferences over [their] outcomes, in terms of power, welfare and- security” (Ademmer 2017: 29). Preferential fit refers to benefits for domestic actors and misfit denotes costs. The analysis of this aspect will cover the different domestic actors involved in the reform processes. It will also distinguish between benefits and costs stemming from the formal institutional framework and those produced in the informal patrimonial networks. This distinction seeks to provide insight on the reasons behind the behaviour of domestic actors. The information on domestic actors collected through this variable in combination with *DVI. (Dis)continuity of the domestic elites and social groups* is expected to contribute for building a typology of domestic actors involved in the political reform processes.

The operationalisation of this variable will follow the two-step approach used by Ademmer (Frieden, 1999; Ademmer, 2017). The first step of the analysis of the preferential fit consists in deductively deriving domestic preferences “by assessing the costs and benefits domestic change in terms of the veto power potential” of the domestic actors (Ademmer 2017: 29). Secondly, as part of the tracing of the reform processes and the individual or group behaviour of domestic actors, I will inductively assess the costs and benefits of the (lack of) compliance that stems from the behaviour of the different domestic actors (*ibid*). Following, Ademmer’s approach, the main sources of information will be interviews, focus groups with domestic actors and secondary sources and media outlets, which are expected to reflect their preferences.

Regarding the empirical findings from this variable, it is expected that democratic reforms will be perceived to strengthen the relative social and political position of the reform-oriented elites. On the other side, anti-reform-oriented actors will negatively assess the loss of relative power, as a result of weakening of the autocratic trends in the regimes, which reinforce or guarantee their predominant position. In addition, certain actors may formally adopt a reform-supportive discourse, while committing to only limited or superficial advancements in the same direction. Similar circumstance might be due to several reasons, among which are the desire to imitate normative compliance, in order to access the incentives provided in the framework of the formal democratic system. However, the actual commitment to the rules adopted is limited, due to the actors’ sense of belonging or costs/incentives produced in an informal neopatrimonial network. This type of behaviour has been defined as fake compliance by Gergana Noutcheva (Noutcheva, 2012). On the other side, the lack of understanding of the steps required for certain reforms might be another reason for similar behaviour. Therefore, in the framework of this research it is important to clarify which formal and informal institutions, do domestic actors belong to and identify with, in order to understand the elements involved in their cost-benefit calculations regarding the outcomes of political reforms.

In addition, as part of the analysis of the external influence, a specific variable will focus on the incentives provided by international actors. This variable is expected to reflect to what degree external actors seek and successfully manage to affect the domestic balance of power and the cost-benefit calculations of the domestic actors.

- ***DV4. Degree of fractionalisation and alternation of the party system and of the opposition;***

The fractionalisation and alternation of the party system essentially reflect the degree of competition taking place in the political system (Morlino, 2011). A higher degree of competition (defined by less fractionalised and better institutionalised party system and

opposition) contributes for deepening democracy in the countries. However, it is expected that in the post-Soviet context personalist politics will affect negatively party competition, leading to unstable party organisation, lack of formalised internal structure and weak opposition forces (O'Dwyer 2006: 25). This aspect of the political system is closely linked to the presence of neopatrimonial networks, as it is considered that strong opposition forces and stable political competition have the capacity to significantly limit the influence of informal political networks.

### ***EXPLANATORY VARIABLES CONCERNING THE INTERNATIONAL CONTEXT***

The external actors' influence will be analysed in parallel to the interactions and processes taking place between domestic actors. This approach aims to isolate the influence exerted by international actors, in order to clearly assess their contribution to the domestic reform processes taking place in the neighbourhood. The following explanatory variables will seek to define the features and consequences of the external influence exerted by the EU and Russia.

#### ***- IV1. Size and credibility of the incentives offered by the external actors***

The incentives offered by external actors will be studied in order to define to what degree they influence the cost-benefit calculation of domestic actors in reform processes. The goal of this variable is to reflect the external influence on the preferential fit (*DV3*) and the capacities/resources of the domestic actors (*DVI*), which have been analysed as part of the domestic variables. Consequently, it will contribute for tracing the effects of the external influence on domestic cost-benefit calculations.

This aspect will be studied through the consideration of the type, size and credibility of the external incentives offered. This variable is borrowed from the 'Enlargement' Europeanization literature that considered EU membership as the threshold for a reasonable incentive, while "all smaller tangible incentives [were] not expected to produce compliance" (Schimmelfennig et al 2006: 58). However, the contractual relationships between the EU/Russia and the countries in the shared neighbourhood have evolved significantly during the last years. The creation of new contractual relationships under the framework of the Eastern Partnership (after 2009) and the Eurasian Economic Union (since 2014) are relatively less researched (Delcour, 2017b).

Therefore, it is expected that the type and size of the incentives offered in the last seven years do have certain influence on the cost-benefit calculations of the domestic actors, even though they do not provide EU membership perspective. The incentives introduced by the external actors might have both positive and negative implication for the neighbouring countries.

Following the differentiation between positive and negative conditionality, large material or economic benefits would contrast with sizable trade or economic sanctions.

In addition, it is important to interpret the size of the material incentives at the light of the *common interdependencies between the neighbouring states and the two external actors analysed*. The analysis of such interdependencies will be performed in the third chapter and will be used as an input for the study of this variable. The relevance of this aspect is emphasized, due to the possibility that different regional interdependencies lead to country-specific implications of the conditionality measures adopted by the EU and Russia. Therefore, this research interprets the size of incentives in relative terms, at the light of the regional interdependencies. To illustrate this point, it is expected that negative conditionality imposed by Russia will have greater implications for countries that are highly dependent on its cooperation, than if there are no relevant links between the two.

On the other side, *credibility of the incentives* is considered as an intervening variable that might reinforce or weaken the impacts of the incentives (defined mainly by their type and size). Credibility implies the realization by domestic actors that the incentives offered, or sanctions imposed will be effectively upheld by the international actor. The lack of credibility denotes that the neighbouring states do not appreciate this possibility as real, which has the potential to reduce the impact of the external incentives offered. In that case the implications for the modification of the domestic cost-benefit calculations will be minimal or insignificant.

#### - ***IV2. Normative-based external support through socialization or discursive action***

This variable captures the external influence exerted on domestic actors through normative mechanisms, as socialization, learning and example. It aims to reflect the consequences of external influence on the (dis)continuity of domestic actors (*DVI*) and the resonance and salience of the democratic norms invoked in the reform processes (*DV2*) that have been analysed as part of the domestic environment. In this way it is expected to achieve a clear differentiation between domestic processes and the change resulting from external influence. It is understood that external actors recur to normative arguments in order to reinforce or weaken the normative-based roles and identities of domestic actors, as well as to support the normative ideas in the basis of the democratic reforms.

The main institutional instruments that might reflect this mobilization of normative pressure in support of specific ideas include statements and declaration; guidance and argumentation in reports and official visits; training or capacity-building projects and missions in the field; expert

opinions and institutional exchanges; socialization of domestic actors in international fora or meetings and Twinning programmes (Kelley, 2004: 20). This phase of the research will focus on the discursive arguments and policy instruments developed by the EU and Russia. The arguments that are mobilized in the shared neighbourhood will illustrate the approach and the values that guide the EU and Russia in the field of political transitions. Secondly, the research will descend on the practical and implementation level of the policy. This phase will clarify in what ways their values inspire specific policy instruments for external influence.

In addition, it is expected that the effects of normative action of the EU and Russia are mediated by the *perceived coherence of the external actors' behaviour and discourse*. It is thus expected that negative assessment by domestic actors of external actors' coherence will reduce the legitimacy of the normative claims raised by the external agents and in this influence negatively the consequences of the external influence. Therefore, the perception of domestic actors involved the reform processes will contribute for assessing correctly the external influence exerted by the EU and Russia. This will also help to understand to what degree the EU or Russia are perceived as (in)coherent (non)normative actors.

The analysis of the explanatory variables concerning the international context is expected to shed light on the *differential empowerment of domestic actors*. Differential empowerment refers to the re-distribution of resources that external norms and resources have on domestic actors, and has been described as “probably the most important agency-centred factor conducive to structural adaptation” (Cowles et al. 2001: 229). The reason for its importance is the fact that external influence has distributional consequences, which alter the domestic resource balance (that is analysed here through the domestic variables) and is likely to affect the preferences of domestic actors. It is considered that both normative ideas and international resources might strengthen the position of certain actors at the expense of others. Possible ways to support these domestic actors has been identified by Tostrup (2015: 674-675).

These four domestic and two international variables have the purpose to measure the outcome of the interaction between external influence and domestic context. Therefore, the effects of the *Size and credibility of external incentives* and the *Normative-based external support* on the domestic context are meant to capture the outcome of domestic power redistribution, originated as result of international influence. In this way, the EU and Russia influence directly interacts with the domestic variable *DV1. (Dis)continuity of the elites and other social groups*. In addition, external actors have the potential to alter the *DV3. Preferential fit* of domestic actors

regarding the reform processes. It is, thus, understood that domestic actors might capitalise these new opportunities and exert influence on democratic domestic reforms.

The hypotheses regarding the performance of the different variables are presented below.

### ***DOMESTIC ANALYSIS***

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#### ***DV1. (Dis)continuity of the elites and social groups that influence the reforms.***

The presence of deep links and continuity of Soviet patrimonial networks will make problematic the actors' alignment with reforms that bring democratic deepening.

Actors that have been (re-)socialised in democratic values are expected to align better and be more persistent in pursuing normative-based behaviour and act as agents of change.

A mixed pattern of behaviour would reflect the discursive adaption of actors to democratic norms, while their actions would contradict the norms.

The resources and capacities of the relevant domestic actors will be analysed inductively and will contribute to a typology of domestic actors together with DV3.

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#### ***DV2. Resonance and salience of democratic norms with domestically held and institutionalized norms.***

High degree of resonance and salience of democratic norms will facilitate normative compliance, but will not have the capacity to revert negative cost-benefit calculations for the domestic actors. These variables will have significant influence when domestic opposition to the reform is low. Resonant and salient norms will be selected for their adoption.

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#### ***DV3. Preferential fit***

Democratic reforms are perceived to strengthen the relative social and political position of the reform-oriented elites, while anti-reform-oriented actors will negatively assess the loss of relative power, as a result of weakening of the autocratic trends in the regimes that reinforce or guarantee their predominant position.

Certain actors formally adopt a reform-supportive discourse, while committing to only limited or superficial advancements in the same direction. This might be due to insufficient understanding of the reforms or fake compliance, aiming to achieve material incentives.

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#### ***DV4. Degree of fractionalisation and alternation of the party system and of the opposition***

Personalist politics leading to fractionalized party system and opposition weakens the political competition in the countries considered.

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### ***INTERNATIONAL CONTEXT***

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***IV1. Size and credibility of the incentives offered by the external actors***

The type and size of the incentives introduced by the EU and Russia in the last seven years do have certain influence on the cost-benefit calculations of the domestic actor, even though the EU does not consider the membership perspective.

The consequences of external influence depend on the regional interdependences between the EU and Russia and the countries in the shared neighbourhood.

Credibility of the incentives offered affects their consequences for cost-benefit calculations.

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***IV2. Normative-based external support through socialization or discursive action***

The effects of normative action of the EU and Russia are mediated by the perceived coherence of the external actors' behaviour and discourse.

Normative based support does not contribute for reversing negative cost-benefit balance.

Domestic actors refer to different norms in their communication with the EU and Russia.

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#### **IV. METHODOLOGY**

This research will apply process-tracing and network analysis for explaining how external actors influence domestic reform processes towards democratic deepening or weakening. For this purpose, Chapter III presents the international context against which the processes take place and discusses the instruments and mechanisms for international influence used by the EU and Russia. The external framing of the EU and Russia is presented, with specific reference to their value- and interest-based justification. This chapter introduces the norms and policies used by the two international actors to influence political transitions in the three countries. This analysis will provide the context for the study of the two international variables presented above: IV1. Size and credibility of the incentives offered by the external actors; IV2. Normative-based external support through socialization or discursive action.

The Chapters IV-XII focus on the three reforms in the fields of Rule of Law, Inter-constitutional and electoral accountability in Armenia, Georgia and Moldova. These chapters trace the reform processes in each country, accounting to a total of nine reforms. In addition, each chapter identifies the influence of contextual factors, domestic political competition and participation, as well as the influence of international actors on the reform process. In these chapters all the domestic variables are analysed DV1. (Dis)continuity of the elites and social groups that influence the reforms; DV2. Preferential fit; DV3. Resonance and salience of the reforms; DV4. Resources and capacities of relevant domestic actors; DV5. Degree of

fractionalisation and alternation of the party system and of the opposition; DV6. Fragmentation of the decision-making system in the field of the reforms analysed. Lastly, the influence of international actors on the domestic context and process is discussed.

Therefore, process-tracing analysis of the nine reforms is developed on the basis of the domestic and international variables described in this chapter. The cost-benefit calculations and the norm-based behaviour of domestic actors are considered throughout the different stages of the domestic reform processes, namely rule selection, rule adoption, implementation and internalization. For this purpose the initial positions of the domestic actors are analysed, as well as their evolution over the period considered. The conscious analysis of the timing of the change in actors' behaviour or attitudes explains the reasons for this change - is it based on normative pressure or is it in response to conditionality of external actors, or a change in domestic or international conditions? In order to assess the reforms in terms of their contribution to democratic deepening/weakening, the social dynamics of opposition in the adoption, implementation and compliance with the norms are taken into account. In addition, when tracing the reform progress, the costs and benefits of compliance (or lack of such) are assessed according to the behaviour of the different domestic actors. This analysis shows how domestic actors see the reforms and work in support or against their adoption and implementation.

In addition, the contribution of domestic actors to the process and outcome of the political reforms and their significance for democratic deepening or weakening of the hybrid regimes is assessed. In addition, the outcome of the process-tracing analysis is used for cross-case comparison between the different reforms taking place in the three countries. This approach provides relevant insight regarding the variables that explain the country- and sector-specific differences in the democratic deepening. It also clarifies the conditions of the causal mechanisms detected and how they operate in the different contexts.

The first stage of the process-tracing research consisted in mapping the domestic actors involved in the democratic reform processes. For this purpose, this study sought to detect all formal and informal actors that pursue to influence the reform processes selected. This step of the process tracing is complemented by network analysis that reflects the connections between the main social and political actors and the domestic institutions. This analysis, apart from illustrating the constellation of domestic actors involved in the reform processes considers their preferences and roles in the processes.

In line with the constructivist theoretical discussed above, the political competition and participation in the nine reforms here have been analysed as a struggle for influencing the

political decisions. In order to understand how domestic actors try to limit or give access to specific social groups to the decision-making process in order to promote their interests, network analysis is used as a complementary method to process tracing. Social Network Analysis (SNA) studies the patterns of social ties and explains “how and why those patterns emerge and what consequences they have for social actors” (Morin, Olsson and Atikcan, 2020: 120). The contribution of SNA adapts very well to the constructivist theoretical basis of this study. SNA focuses on the structural features of the network as a whole, seen as an environment in which decision-making takes place. In addition, it provides insight on the individual nodes that build up the network. It is assumed that their position and connections (edges) both enable and constrain their action (Morin, Olsson and Atikcan, 2020: 120). The edges in the network indicate the relation between the nodes that compose it. The different features of the nodes and edges can help visualise and understand the position of the nodes within the network. For instance degree centrality refers to “the number of edges that are adjacent to a node” (Morin, Olsson and Atikcan, 2020: 120). In this study the size of the node is based on their degree centrality, meaning that a node with more edges will have a bigger size.

The exact type of SNA used here is affiliation network based on biographical data of the members of the main decision-making Commissions in charge of drafting laws or implementing reform strategies. The affiliation network includes individuals linked in a network to their employers or affiliation institutions. The goal of such network analysis is to provide information regarding the background of the individuals involved in the reform. The use of affiliation networks in this research draws on the theoretical assumption that mimetic processes based on adaptation mechanism lead to individuals (nodes) to become “homogeneous as a result of experiencing and adapting to similar social environments” (Borgatti *et al.*, 2009: 894). Therefore, if two individuals are linked “to the same (or equivalent) others, they face the same environmental forces and are likely to adapt by becoming increasingly similar” (Borgatti *et al.*, 2009: 894).

A specific feature of affiliation networks is that they include two different types of nodes: individuals and organisations and the links between them illustrate the connections between individuals and the organisations in which they have worked. In this case, the adaptation mechanism would lead to the development of similar organisational culture among those nodes (individuals) that have worked for the same or similar organisations. Therefore, if most of the individuals in a network have been employed in Executive bodies, rather than Judiciary, they would belong to a specific institutional culture, leading to different behaviour and attachment to different values as could be independence and impartiality in the case of the

Judiciary, or obedience and compliance in the case of the Executive, political parties etc. The network analysis based on the biographical data of the individuals involved in the reform processes sheds light on the (dis)continuity of the domestic elite and the relations between formal and informal institutions. For instance, a high number of individuals that have been employed in the past by companies or organisations controlled by an oligarch or a specific political leader will indicate a possible informal allegiance and efforts to control of the political process by such informal organisations or political leaders.

Apart from the theoretical aspect described above, the use of affiliation networks shows what type of organisations and background are represented and/or dominant in the main decision-making Commission. This illustrative point provides insight on the dynamics of the reform processes. For instance, if individuals linked to the President or to specific political parties are overrepresented in the Constitutional Commission, this will indicate who is the driver behind the process and which perspective will be dominant. Furthermore, the affiliation analysis will also show if another type of actor, as CSO for example, are not represented at all in the reform processes. Thirdly, the involvement of different social actors can be used as an explanatory variable for the outcome of the political reforms to the degree that the background of the individuals involved might be key for defining the main features of the political reform. It is assumed that domestic actors seek to influence the composition of such decision-making Commission, in order for the law or reform process to reflect their preferences.

The analysis of the composition of such bodies is indicative of the intentions of the body which nominates them and of the minimum requirements, with which they have to comply. Therefore, the affiliation networks of the decision-making Commissions will also illustrate dominant features of the political system of the country studied. For instance, if members with executive background are dominant, then it will illustrate a highly centralised system. On the contrary, a broad institutional and civil society representation in the Commissions will be indicative of greater societal and inter-institutional accountability. Lastly, this type of network analysis provides evidence of the dynamics of inter-group mobility of the elite. For instance, an indication of a high mobility would be if many individuals have experience in a wide variety of organisations – Judiciary, Executive, NGOs, International Organisations and political parties. Such context provides the conditions for individuals to change their position in adaptation to the different social changes.

For each of the nine reform processes such commissions have been identified and biographical data for the past affiliations and employment of their members has been collected. This has led to the identification of a total of fifteen Commission that were translated in fifteen

small databases, which include the members of the Commissions and their employment/affiliation organisation. In several cases parallel Commissions or decision-making bodies have been created, which explains why 15 small databases are created for the 9 reform processes. The comparison between alternative decision-making bodies allows to draw relevant conclusions on the competing social and political groups and on their network capacities in terms of access and possibilities to mobilise experts and create alternative decision-making bodies. At a second stage this databases have been translated in affiliation networks, which link individuals and institutions as described above. A list of the affiliation networks used in this research is presented below.

1. Figure 6. Affiliation network of the Committee entitled to implement the Strategy for Judicial and Legal reform Armenia (2012 – 2016)
2. Figure 9. Affiliation network of two Working Groups (random case allocation and Prosecution reform) in charge of the implementation of the Criminal Justice Reform Strategy (2012 – 2016)
3. Figure 10. Affiliation network of individuals involved in drafting of the Comprehensive Justice Sector Reform (2017 – 2020)
4. Figure 12. Affiliation Network based on the Commission for the implementation of the Judicial reform strategy Moldova (2011 – 2016)
5. Figure 13. Affiliation Network based on the Commission DODON (2019)
6. Figure 14. Affiliation network of members of the Constitutional Commission Armenia 2013 – 2015
7. Figure 15A. Affiliation network State Constitutional Commission Georgia 2009 – 2011/  
Figure 15B. Simplified affiliation network State Constitutional Commission Georgia 2009 – 2011
8. Figure 16. Affiliation Network Public Constitutional Commission Georgia 2009 – 2010
9. Figure 17. Affiliation Network Joint Constitutional Commission Moldova 2000.
10. Figure 18A. Affiliation Network 18 MP who filed a complaint to the Constitutional Court Moldova 2016 (only relevant actors)/Figure 18B. Affiliation Network 18 MP who filed a complaint to the Constitutional Court Moldova 2016 all actors
11. Figure 19. Affiliation network of members of the Constitutional Commission Armenia 2013 – 2015
12. Figure 20A. Reduced affiliation network of the Commission for the Electoral Reform Armenia 2018/ Figure 20B. Complete affiliation network of the Commission for Reform of the Electoral Code Armenia 2018

13. Figure 22. State Constitutional Commission Georgia 2016 Simplified

14. Figure 23. Affiliation network PDM MP drafting electoral reform 2017 Moldova

15. Figure 24. Affiliation network PSRM MP drafting electoral reform 2017 Moldova

Legend. Affiliation network

	<i>Member of Commission</i>		<i>Legislative</i>
	<i>Academic entity, University</i>		<i>International Actor</i>
	<i>Executive</i>		<i>Judiciary</i>
	<i>Political Parties</i>		<i>Independent body</i>
	<i>International NGO</i>		<i>CSO</i>

Given that the affiliation networks above comprise both individuals and organisations, different colours are used for the types of organisations. The following types of organisation have been used for this purpose: executive, legislative, Judiciary, CSO, international actors, ≈ Independent bodies, political parties, International NGO. On occasions Higher Education, Health Sector and Local Authorities have been added to this list. These categories are identified by the colours included in the legend above. The size of the circle of the nodes shows the degree centrality of the institution or individual based on the number of its links to other institutions or individuals. This degree centrality is relevant only in the case of the institutions, as the goal of this affiliation networks here is to identify the dominant institutions, rather than the individual capacities. Therefore, the network analysis here is used with structural focus on the decision-making environment at key stages as drafting, identification and implementation of democratic reform. Each individual is connected only to institutions based on the biographical information collected and each institution is linked only to individuals. The thickness of the lines depends on the number of positions that the same individual has held in an organisation. For instance, if one member has started as an officer and then has become head of department in the same organisation, the line connecting them would be thicker.

In conclusion, the combined use of process tracing and network analysis provides relevant insight on the interaction between individuals and organisations in the decision-making processes. In this way the trends of domestic participation and competition are graphically illustrated and significantly contribute to the explanation of the outcomes of the reform processes. Therefore, this methodological approach fits very well to the requirements of the theoretical basis of the research as it shows the domestic struggle for power between diverse actors. Secondly, informal trends of interaction and variables as (dis)continuity of the domestic elite are more clearly illustrated and their influence on the final outcome is traced.

# ***CHAPTER 3. REGIONAL EXTERNAL FRAMING OF THE EU AND RUSSIA***

## **I. REGIONAL CONTEXT IN THE EU-RUSSIA NEIGHBOURHOOD**

The recent trends of parallel external influence exerted by regional powers have the potential to deepen or weaken democratic qualities of political regimes. The innovative features and the uncertain consequences of these international dynamics pose new theoretical and political challenges, which require in-depth analysis. The increased competition for shaping domestic policies and international alignments has led regional powers, as the EU and Russia, to further adapt their external policy approaches to the different target countries. The aim of this chapter is to present the main debates concerning the current geopolitical context, as well as the external framing of the EU and Russia in the field of democracy. The specific policies developed by the EU and Russia will be examined, while identifying the different approaches adopted and the domestic actors addressed. This chapter will outline the similarities and differences between the approaches of the two actors and will contextualise the analysis of the two international variables: IV1. Size and credibility of the incentives; IV2. Normative-based external support. Therefore this chapter provides the background for the process-tracing.

From historical institutionalist perspective the end of the Cold war and the demise of the Soviet Union is a critical junctures, which appeared to provide the foundations for the “end of history”, as the “endpoint of mankind’s ideological evolution and the universalization of Western liberal democracy as the final form of human government” (Fukuyama 1989: 3). However, almost thirty years later, the rise of non-Western powers increasingly put into question the Western unipolar domination and model. The context of the EU-Russia neighbourhood, has evolved from Western consensual domination to growing competition and even open opposition in the last decade, with definitions of the region as “contested” (Ademmer, 2017; Delcour, 2017b). This competition was announced in mid-2000s by the parallel adoption of the overlapping ideas of Russian ‘near abroad’ and European ‘new neighbours’. The idea of “common” or “shared neighbourhood” was introduced in Russian academic literature from a dominantly realist perspective in parallel to the European Neighbourhood Policy (ENP) (Gomara, 2005; Lynch, 2005; Shishkina, 2014; Izotov, 2018).<sup>6</sup>

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<sup>6</sup> The use of the term ‘shared neighbourhood’ in the title of the present research does not indicate the alignment and/or adoption of any of the above perspectives, but aims to underline, from a constructivist perspective that the

These diverging conceptualisations of the EU-Russia neighbourhood is accompanied by the corresponding foreign policy perspectives. In the 2000s the question of the different ‘actorness’ of the EU and Russia was perceived as the root cause of all misunderstandings and “real source of the confrontation” (Krastev, 2007). Researchers in the 2000s and even today (Meyer and Sales Marques, 2018) point to the clash between the “post-modern state embodied by the EU and the traditional modern states embodied by Russia” (Krastev, 2007). This inherent contradiction between alternative modernities (Meyer and Sales Marques, 2018) is seen as the basis of the opposition between ‘supranational democratic governance’ and ‘sovereign democracy’, between human rights and traditional orthodox values. Furthermore, the EU was analysed as normative and civilian power (Manners, 2002), in opposition to Russia’s geopolitical and hard power approach (Gould-davies, 2016).

From the perspective of International Relations, these debates touch upon the type of international system and regionalism promoted by the EU and Russia. Connectedly, in the shared neighbourhood coexist two types of regionalism and regional ambitions – “a mix of ‘new (post-hegemonic) regionalism’ and ‘old (hegemonic) regionalism’” (Telò 2016: 273). For instance, both the EU and the Eurasian Economic Union (EEU) fulfil a clear post-hegemonic economic functional logic, which provides rules and institutional frameworks “in the absence of a relevant and credible global governance system”. However, “an expansionist [,old (hegemonic) and asymmetrical logic” appears to guide their actions in a region with a very high number of international organisations (Telò 2016: 273). The consideration of these regional alternatives as incompatible necessarily leads to exclusion and competition.

Furthermore, a broad body of literature analyses Russia’s contribution for reducing the normative projection of the EU (in terms of norm transfer/diffusion) (Ademmer 2017; Delcour 2017), or conceives it as autocratic influence in terms of “autocracy promotion”, “democracy obstruction” (Obydenkova and Libman, 2015; Babayan, 2016), “black knight” (Levitsky & Way 2006; Way 2009: 41; Hufbauer et al. 1990: 13) and Authoritarian Gravity Center (Kneuer & Demmelhuber 2015: 781). Therefore, Russia is increasingly seen as a regional obstacle for democratic transitions in post-Soviet countries. However, there is lack of consensus in the literature on this topic as other scholars reject this opposition between democracy- and autocracy-promoters. They claim that Russia’s regional influence has been

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space between the two regional powers (the EU and Russia) is mutually constructed together with the interested countries. Connectedly, this research aims to clarify the contribution of the EU, Russia and the domestic actors in such regional construction and does not aim to advocate for any specific approach and/or policy.

defined by its geopolitical and geo-economic interests to counter Western influence, rather than by the goal to promote authoritarianism (Tansey, 2015; Way, 2015b, 2015a, 2018). Russia, on the other side, has adopted and/or mimicked liberal vocabulary and Western methods as a framework for its foreign policy strategies (Morozov, 2015; Krastev, 2015). This strategy transforms Russia's traditionally realist approach, giving it a more normative pretension.

In addition, Russia questions the normative ambitions of EU's democracy promotion in the neighbourhood. In 2014 in Ukraine "Russia saw the EU as a geopolitical rival and behaved accordingly" (Nodia 2014: 148). The need for the EU to "base its policies on the recognition of this fact" certainly has influenced the ENP, forcing it to move away from the post-modern image invoked previously and reinforcing its geopolitical features (Nodia 2014: 148). From a constructivist perspective, Chris Browning explores the way in which the EU mobilises geopolitical strategies as "mechanisms of ontological security seeking" (Browning 2018: 107). Aspirations of geopolitical ordering of the space around its borders have been expressed in the ENP goals, as for instance the building of 'ring of friends' and "a zone of prosperity and stability" (European Council, 2003; European Union, 2008).

Consequently, this chapter argues that the two actors challenge each other's identity and policies in a way that has given the EU a more geopolitical stance, while Russia has mimicked liberal terms and included them in its neo-conservative perspective. This evolution of the EU's and Russia's foreign policy has been defined by their interactions in the last 30 years. It has also framed the regional and domestic dynamics for the countries in the shared neighbourhood. These changed approaches of the EU and Russia appear to increasingly condition and define the political transitions of countries as Armenia, Georgia and Moldova. This combination of innovative and more traditional regional strategies, as well as the academic debate on the actual goals and consequences of Russia's influence in parallel to EU's norm diffusion invites for the study of the different policies that target the countries in their shared neighbourhood – countries that seem to divide more than unify. The evolution of the conceptual and policy framework of the EU, Russia will be traced in this chapter. The geopolitical and value-based stance of the two actors will provide the context for analysing the different policies that exert influence on the political transitions and reform processes in the region.

## II. EU'S EXTERNAL INFLUENCE

### II.1. *Democracy and EU policy values*

The legal basis for EU's democracy support is developed in the Lisbon Treaty, which described its identity as based on values as freedom, democracy, equality, the rule of law (European Union 2008: Art. 2). In addition, Article 3 of Treaty on European Union (TEU) states that “[I]n its relations with the wider world, the Union shall uphold and promote its values and interests...” (European Union 2008: Art. 3). Also Art. 21 of the TEU states that “[t]he Union’s action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms” (European Union 2008: Art. 21.1). Furthermore, to “consolidate and support democracy, the rule of law, human rights and the principles of international law” is one of the goals that guides the common policy actions in international relations (European Union 2008: Art. 21.2). It has been suggested that the list of values to be upheld by the EU, as it is included in the article 21 of the TEU, “suggests complementarity between the objectives and various policy areas of the EU (Ghazaryan, 2014). The central position of the values and democracy support as a goal of the EU foreign action led many scholars to describe the EU as “normative power” (Manners, 2002).

However, its legal and policy development adds nuances to this definition. Democracy support is defined in broad terms, including diverse social and political actors:

*“EU democracy support should therefore aim at assisting efforts and strengthening the capacity of Governments, Parliaments and other state institutions, political actors, civil society organisations and other actors. EU efforts aim at contributing to sustainable development, respect for human rights, democratic governance, security, poverty reduction and gender equality”* (Council of the European Union 2009a: 1).

Therefore, the EU policy documents do not opt for a specific model of democracy, but define key shared features as “the respect for human rights and fundamental freedoms, including the principle of non-discrimination” or the “ability of all men and women to participate on equal terms” (Council of the European Union 2009a: 1). The EU has emphasised the “essential oversight role of democratically elected citizens’ representatives”, “national assemblies, Parliaments and local authorities in domestic policy-making”, as well as “NGOs and other non-state actors” (Council of the European Union 2009a: 1). In 2016 the Global

Strategy for the EU's Foreign and Security Policy (EUGS) opted for a list of all the values that "have inspired [EU's] creation and development" as essential for democracy – "respect for and promotion of human rights, fundamental freedoms and the rule of law, [...] justice, solidarity, equality, non-discrimination, pluralism, and respect for diversity" (European Union 2016: 15).

Secondly, democracy is part of a long list of policy goals of the European Neighbourhood Policy (ENP) as security, stability and human rights, which requires a more detailed consideration of the relationship between them. Researchers argue that "democracy promotion is present within the objectives of the policy as an element of stability" (Ghazaryan 2014: 28; Balfour 2012). For instance, one of the founding documents of the ENP states that "[d]emocracy, pluralism [...] are all essential prerequisites for political stability, as well as for peaceful and sustained social and economic development" (Commission of the European Communities 2003: 7). Similar conceptualisation of democracy as a means to achieving stability and security finds its foundations in the EU experience. For instance, in 2003 the European Security Strategy (ESS) described the central role of the EU for the establishment of unprecedented peace and stability in European history. In the same line, it affirmed that "the progressive spread of the rule of law and democracy has seen authoritarian regimes change into secure, stable and dynamic democracies" (European Council 2003: 1).

These clear links between democratic political regimes and stability might be seen as a reflection of the democratic peace theory (Russett, 1993). It is also linked to the idea of "normative power" (Manners, 2002) and "soft power" (Nye, 2005). "Soft power" initially focused on the United States and referred to "the ability to shape the preferences of others", "through attraction, rather than coercion or payment (Nye, 2005: viii, 5). The "normative power", on the other hand refers to "the EU's ability to shape conceptions of "normal" in international values", which emphasizes its focus on values as a definitional feature of the EU (Manners, 2002: 239). This debate also touches upon the concept of "civilian power" introduced by Duchêne in 1972. At that stage of EU's development Duchêne underlined two aspects of the EU. Firstly, the transformation of the "war and indirect violence to civilised politics" within the EU (Duchêne, 1973; Keukeleire, St. & Delreux, 2014: 26). And secondly, the idea of civilian power captured the possibility of the EU to be a power at the international stage "without possessing military instruments" (Duchêne, 1973; Keukeleire, St. & Delreux, 2014: 26). In the international dimension, the EU was seen as having the capacity "to spread civil and democratic standards around the world" (Telò, 2006: 208).

However, the end of the Cold War and the conflicts in the 1990s brought a growing realisation that the EU had to evolve beyond the purely civilian side. The strategic documents of the EU increasingly reflected this realisation. The EUGS adopted in 2016 reinforced the link between democracy, prosperity and stability. It emphasised resilience as a key goal that embodies the three values and clearly prioritises security as a precondition for prosperity and democracy to greater extent than in the 2003 Security Strategy.<sup>7</sup> For instance, it states that “[a] resilient state is a secure state, and security is key for prosperity and democracy” (European Union 2016: 23). Consequently, the EUGS inverts the relationship between democracy and stability. If in 2003 the ESS claimed that democracy was a precondition for stability, in 2016 the achievement of stability and security is seen as a requirement for democracy, which ultimately builds resilient societies and states. The liberal peace perspective of the 2003 ESS is illustrated by statements as “the best protection of our security is a world of well-governed democratic states” (Council of the European Union 2003: 10). On the other side, in 2016 a principled pragmatism is embraced by the EUGS, which marks the shift towards more realist perspective dominated by a security-oriented resilience (Wagner and Anholt, 2016).

Similar prioritization of the security and defence dimensions is present also in the “vital interests underpinning [EU’s] external action” (European Union 2016: 13:30). For instance, the first three priorities of the EUGS are 1) The Security of our Union; 2) State and societal resilience to our East and South (which develops the goal of democracy and prosperity in the EU Neighbourhood); 3) An integrated approach to conflicts and crises (European Union 2016: 18:30). It appears that the multiple internal and external crises that ‘question’ and ‘bring under threat’ the EU have inspired the 2016 EUGS (European Union 2016: 13). Therefore, stability has become the primary goal, on which to build democracy and prosperity in the EU and on its borders. Critiques of the EUGS argue that “this new form of pragmatic differentiation becomes an excuse for the EU’s normative indifference or inconsistency” (Koenig 2016: 9). The inclusion of only limited partnership priorities could give ground to exclusion of sensitive and normative issues as “frozen conflicts, democracy and human rights (Koenig 2016: 9). In conclusion, the adoption of a more flexible democracy support approach by the EU, is accompanied by the prioritisation of values as security and stability. The versatile definition of democracy is embedded in the EU principled pragmatism allows a variety of approaches.

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<sup>7</sup> Resilience, according to the EUGS is “the ability of states and societies to reform, thus withstanding and recovering from internal and external shocks” (European Union 2016: 23).

## ***II.II. European Neighbourhood Policy values and goals***

The EU Enlargement process of 2004 and 2007 brought closer the EU to the Eastern European states that had gained their independence after the collapse of the Soviet Union. The displacement of the EU borders led to the need to redefine its role towards its new neighbours. This strategic requirement was pre-announced in 2002 by Christopher Patten and Javier Solana, who revealed the intention to create a “new proximity policy” (Patten and Solana, 2002). In addition, the 2003 ESS introduced the idea of “ring of well governed countries” in the Eastern and Southern Neighbourhood of the EU (European Council, 2003). In this initial formulation of the ENP goals it is possible to identify the EU aspirations of geopolitical space-ordering, which make possible to differentiate a realist approach that underpins the value-based action of a purportedly “normative power” (Manners, 2002; Browning, 2018).

On the other hand, normative motivations, expressed under the label of “shared values” - such as “democracy, respect for human rights and the rule of law” in addition to social and economic development - are introduced in the heart of the policy (Commission of the European Communities 2003: 4). Democracy, civil liberties and the rule of law “are all essential prerequisites for political stability, as well as for peaceful and sustained social and economic development” (Commission of the European Communities 2003: 7). In this equation, democracy, as well as political and civil rights instrumentally contribute to both political stability and economic development. The explicit presence of this link confirms the analysis that in the policy foundations of the ENP and the ESS in the 2000s, democracy “is a means to an end, that is to achieve stability and security” (Ghazaryan 2014: 28). The foundations for EU norm export and for the development of this policy were laid down in Art. 8 of the TEU:

*“The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation” (European Union 2008: Art. 8).*

In this way Art. 8 TEU codified the basis of the ENP as a “proactive policy of transformation of the neighbouring states” (Elsuwege & Petrov 2014: 18). In addition, the shift from the language of “shared values” adopted in the ENP founding documents to “the values of the Union” in TEU (2008) illustrates the shift towards explicitly normative objectives in the region. In addition, Art. 8 TEU serves as a basis for the application of the EU conditionality. The adoption of the EU values as the basis for special relationships, allows the EU to condition

the deepening of the relations on “the modulation of actions [of its neighbours] to achieve its aims” (Elsuwege & Petrov 2014: 19; Ghazaryan 2014). For instance, in 2003 the European Commission (EC) established that it will “enhance its relations with its neighbours on the basis of shared values” (Commission of the European Communities 2003: 3). “[T]he extent to which these values are effectively shared” influences the “level of ambition of EU’s relationships” (Commission of the European Communities 2004: 3). Consequently, it is possible to conclude that the EU adopts a dual approach towards democracy support in its neighbourhood, treating it as an objective and as a condition for a deeper relationship.

However, in 2015 the EC recognized that “today’s neighbourhood is less stable than it was ten years ago”(European Commission and High Representative of the European Union 2015a: 1). Since 2011 instability and conflicts have increased, while disrupting “progress towards democracy” (European Commission and High Representative of the European Union 2015a: 6). This analysis illustrates the way in which the Arab Spring and the events in Ukraine in 2014-2015 have contributed for defining stability as the key condition for democracy and prosperity in the neighbourhood. Some of the declared shortcomings of the ENP were the “lack of sense of shared ownership”, the limited contribution of the ‘more for more’ principle for the “atmosphere of equal partnership”, as well as the lack of reflection of the aspirations of all the countries in the concept of differentiation (European Commission and High Representative of the European Union 2015a: 4). Consequently, in 2015 a new ENP Review has strengthened the differentiation between the neighbouring countries in order to provide more tailor-made interventions and to increase its capacity to respond to the challenges that neighbours face.

Even though the objective to develop “an area of shared stability, security and prosperity” remains the main guiding goal of the ENP (European Commission and High Representative of the European Union 2015a: 3), in 2015, the stabilisation was prioritised as “the most urgent challenge in many parts of the neighbourhood” and as “its main political priority” (European Commission and High Representative of the European Union 2015b: 2-3). In addition, the respect of universal values as democracy, rule of law and human rights will be fostered through more “effective ways to promote reforms [...] in mutually agreed format” (European Commission and High Representative of the European Union 2015b: 5).

In conclusion, the security and stability dimension is reaffirmed as a priority and necessary condition for democratic development. Furthermore, the EU democracy support does not opt for a specific model, instead it enumerates it together with different internationally recognised concepts as human rights and fundamental freedoms. This approach has been

defined as fuzzy or vague, with the tendency “to become technocratic [and depoliticised] in nature”, due to the lack of a “systematic conceptual model or clear ideological vision” in its strategic documents (Wetzel & Orbie 2015: 43; 239). This lack of normativity gives the EU the opportunity to “proceed on the basis of the most broad-based and universal definitions possible” and avoid difficulties due to the contested character of this concept (Wetzel & Orbie 2015: 42). The need to seek more ‘tailor-made’ and ‘mutually agreed formats’ in the spirit of policy differentiation and ownership has been discursively reinforced since 2015. A similar trend is observed regarding the links between stability, resilience and democracy. In the case of the EU neighbourhood, however, the TEU adopts a clearly transformative and normative model based on the EU values. Such a versatile discursive approach of the EU towards its neighbours, requires a study of the specific policy development in order to clarify its features.

### ***II.III. ENP policy framework***

The ENP was established in 2004 on the foundations of the institutional and policy framework used for the EU enlargement, which in this case lacks a membership perspective (Delcour, 2011). It includes a Cooperation Council, Cooperation Committee and Sub-Committees that bring together representatives of the EU and its partners. The Neighbourhood Action Plans (AP) were the only new bilateral instrument introduced in 2004 as “fully negotiated and mutually agreed at the political level” and “intended to strengthen commitment to these values” (stability, prosperity and democracy) (Commission of the European Communities 2006: 3; Lannon 2012; Commission of the European Communities 2004: 13).

The ENP, however, reflected an essential weakness of the EU, and of its Enlargement, which sought to ensure that “countries can participate in a common market, budget and policies” (Grabbe 2014: 41). As conceived in the 2003 the ENP envisaged the “prospect of a stake in the EU’s internal market and further integration and liberalisation to promote the free movement of persons, goods, services and capitals”, as an incentive for “concrete progress demonstrating shared values (European Commission 2003: 5). In order to reach these two goals (shared values and market integration), the EU candidates and neighbours were expected to transpose the *acquis communautaire* into their national legislation and to comply with the political criteria, which included respect of values as democracy, rule of law human or minority rights (Kochenov, 2004; Olga and Mascauteanu, 2011; Grabbe, 2014). Due to the lack of experience and capacities for internal regulation of the political criteria, the *acquis communautaire* represented the bulk of the requirements for integration (Elsuwege and Petrov,

2014). In contrast, the weight in terms of legislation of the political criteria was more limited and was outsourced to the Council of Europe (Elsuwege and Petrov, 2014; Grabbe, 2014).

For instance, the AP between Armenia, Georgia, Moldova and the EU, signed in 2005, were conceptualised by the Directorate General of Enlargement and “were designed in a similar fashion to the structure of the [Accession Agreements]” (Grabbe 2014:105). The political criteria in the AP is developed in 5 pages for Armenia and Georgia, 7 pages for Moldova (of which only two correspond to democracy and rule of law), while the technical-economic criteria is 20 pages for Armenia, 22 pages for Georgia, 29 for Moldova (European Commission, 2005a, 2005c, 2005b). This relative weight of the political and technical-economic criteria illustrates the comparative strengths and lagoons in the EU *acquis*. The lack of “expertise and, hence self-confidence in setting standards”, explains the difficulties the EU faced in widening “the scope of conditionality” in the fields “where there is no *acquis* or clear link between the political conditions and the ‘obligations of membership’” (Grabbe 2014: 45). Consequently, the conditionality suffered from a deficient development of the political criteria. Therefore, it is possible to conclude that the EU has specialised in the regulation of a sector-specific policy structure, while lack expertise in respect to system-wide domestic structures (Cowles et. 2001).

In addition, the lack of membership perspective limited the scope of the application of conditionality, and left the political dimension of the ENP to be dominated by a socialisation dynamic (Kochenov, 2004; Elsuwege and Petrov, 2014). The most illustrative example of the failure of non-*acquis* conditionality in the ENP is Moldova, which between 2007 and 2013 received “the highest support per capita in the Eastern Partnership” (€482 million) (Kostanyan 2016: 3) and was considered as a “poster child” and “front-runner” (European Commission, 2013c, 2014). However, these generous financial contributions and positive assessments ignored the state-capture by influential economic elites and the lack of democratic and accountable institutions in the country (Kostanyan, 2016a). The disappearance of €1 billion in 2014 made necessary for the EU to recognise the political weaknesses of the state institutions and seek effective ways to reinforce the political conditionality.

In 2009 the Eastern Partnership (EaP) initiative was adopted in order to “advance the cause of democracy, strengthen stability and prosperity” (Council of the European Union 2009b: 11; Shapovalova 2009). In the bilateral dimension it introduced the possibility to negotiate Association Agreements (AA) and Deep and Comprehensive Free Trade Areas (DCFTA). This new contractual framework is intended to meet the aspirations and to increase the incentives for “economic integration in the EU internal market” (Elsuwege & Petrov 2014:

5). On the other hand, the domestic costs have also increased due to a “structured approximation process”, which requires a “far-reaching legislative approximation with EU standards and norms” (Elsuwege & Petrov 2014: 5). In addition, the AA develops the value-based conditionality of the EU. The ‘common values’ stated in art. 2 of the AA (in terms similar to the Art.2 TEU) are upgraded to the “level of binding principles underlying the entirety of the” AA and are defined as its ‘essential elements’ (Elsuwege & Petrov 2014: 61). Adherence to these common values is a condition for the implementation of the agreement, which assumes the possibility of its suspension in the case of their violation (European Union & Republic of Moldova 2014: Art. 422; European Union & Republic of Georgia 2014: Art. 455).

This innovation seeks to compensate for the past weaknesses of the EU conditionality application in the field of EU values. In support of this strengthened conditionality, a multilateral thematic platform on Democracy, good governance and stability was established, in order to “facilitate the development of common positions and joint activities” (Commission of the European Communities 2008a: 8 ). These platforms recur to socialisation through regular meeting between the EC and representatives of the EaP states, in order to strengthen EaP states’ capacities in legislative approximation and political reform (Elsuwege and Petrov, 2014).

In the spirit of differentiation, the EU has intended to adapt to the aspirations of its neighbours and to provide them with more tailor-made cooperation frameworks. Armenia is the first case where significant adaptation has been achieved by the EU. After negotiating an AA/DCFTA, in 2013 Armenia abandoned the agreement, under the pressure of Russia and joined the EEU. This U-turn put an end to the expectations to combine Russia’s “security umbrella with an adherence to the EU’s economic model” (Dragneva et al. 2017: 13). However, in 2017 the EU and Armenia signed a Comprehensive and Enhanced Partnership Agreement (CEPA), which adopts the AA framework with a significantly reduced trade-related part. CEPA is a contractual framework compatible with both the EU and EEU.

Furthermore, with the establishment of the EaP, the EU recognised the “need for an increased visibility of the [ENP] to advance ownership” involving civil society (Commission of the European Communities 2008: 11). Therefore, the EaP was complemented by the EaP Civil Society Forum. In addition, in 2011 the European Endowment for Democracy was launched in order to assist civil society in difficult contexts (European Commission and HR/VP for Foreign Affairs and Security policy 2011: 4). The several ENP reviews allowed the EU to develop a complex policy framework. Figure 3 summarises the policy instruments used and the underlying models for external influence, based on the typologies of Chapter I (p. 11-12).

Model	Broad theoretical approach	Target	Mechanism	Outcome	ENP Instrument	Domestic target group
Imposition	-----	-----	-----	-----	-----	-----
Leverage	Rationalist institutionalism	Polity	Conditionality	Democratic institutions	Bilateral contractual	Elites (political leaders of the national decision-making institutions) and increase social support for the EU economic and social model.
Linkage	Sociological Institutionalism	Society (civil society and elites)	Socialization	Democratic culture	Civil Society Forum, Multilateral platforms; Euronest (Parliamentary and party cooperation)	Elites (political leaders of the national decision-making institutions), civil society and the society in general
Partnership	Social Constructivism	Society, Polity and sector specific cooperation	Equal dialogue and prioritization of common goals and methods	Ownership – partners negotiate as equals on the development of democratic culture, institutions and governance.	Multilateral platforms	Elites (political leaders of the executive and relevant decision-making institutions)
Governance	Sociological Institutionalism	Sector specific cooperation	Learning/ Socialization	Democratic governance	TAIEX and Twinning	Employees of the administration of specific policy fields

Figure 3. ENP Policy framework Source: compiled by the author based on (Borzel and Risse, 2000; Schimmelfenning, Engert and Knobel, 2006; Magen and Morlino, 2009; Korosteleva, 2012; Kneuer and Demmelhuber, 2015; Tina; Freyburg *et al.*, 2015)

### ***II.III.I. Leverage model in the ENP bilateral instruments***

The leverage model is inspired by Rationalist Institutionalism and applies the conditionality instrument. From this perspective, the contractual relationship, the implementation of cooperation programmes or financial contributions, are made conditional on the compliance with EU norms, values or principles. It is assumed that positive and negative conditionality will effectively influence the cost-benefit calculations and shape the behaviour of domestic actors. Conditionality targets the political elites of the EaP countries, including all members of the political institutions. In addition, the increased opportunities for cooperation and consequent economic and social development is expected to broaden the social support and, in this way, increase the pressure on the political elite.

The bilateral track of the ENP is based on this model. The contractual relations with the partner countries are established on this bases, including the PCA, AP, AA and DCFTA. The introduction of the possibility to sign AA/DCFTA was conceived as a new incremental step in the contractual relationships that would provide increased market access and funding opportunities, and in this way tip the cost-benefit calculation of the EaP countries that were expected to commit to political and economic reforms. It is, however, important that the promised market access is conditional on the application of the stipulated reforms and on the respect of the common values mentioned in Art. 2 of the AA/DCFTA or CEPA.

### ***II.III.II. Linkage model in the ENP***

The linkage model is based on a socialisation mechanism, which seeks to strengthen domestic actors in a way that would allow them to perform the desired reforms. Its purpose is to socialize them in the relevant norms and/or values (i.e. democracy) in a way that would lead to internalisation of the logic of appropriateness (Freyburg et al. 2015). This mechanism may target political leaders and the broader society. At the level of the national leadership, the ENP has developed the multilateral track, which targets the political elites in the government and administration. The thematic platform on Democracy, good governance and stability provides a space for regular multilateral discussions between officials of the EC and the EaP states.

Beyond the executive, the Euronest initiative constitutes an important channel for socialisation of the domestic political elites. This is a multilateral forum of cooperation between the European Parliament (EP) and the parliaments of the EaP countries, who are expected to learn values, rules and norms. For this purpose the EP recurs to the use of the plenary assembly, working groups and committees. An important incentive for the EaP parliaments to take part

in this initiative is the possibility to “gain a higher status and legitimation by participating in [...] a forum for voicing their positions” (Kostanyan & Vandecasteele 2016: 230). In addition, a growing number of EP parties and/or party families tend to establish agreements and cooperation with EaP parties. This type of cooperation has a lot of potential in terms of socialisation of domestic actors and legitimation of their actions.

Regarding the support for the broader society, different funding and policy instruments have been developed under the ENP. The European Initiative for Democracy and Human Rights (EIDHR) provided direct assistance for civil society and democratization. Under the ENPI (2007-2013), specific budget lines as “Democracy and Human Rights” and “Non-State Actors and Local Authorities Development” were used to channel the funds towards NGOs and civil society in general in the Eastern Neighbourhood. The Communication on EaP of 2008 recognised that reforms “require stronger participation of civil society to enhance oversight of public services and strengthen public confidence in them” (Commission of the European Communities 2008a: 11). Consequently, the Eastern Partnership CSF was launched in May 2009 in order to “promote contacts among CSOs and facilitate their dialogue with public authorities” (Commission of the European Communities 2008a: 11). The CSF gives the opportunity to civil society to contribute to EU policy-making (Kostanyan 2014).

After the Arab Spring the EU created the European Endowment for Democracy (EED), which adds an innovative bottom-up approach with focus on unregistered and online activists, in order to make possible and more effective the EU contribution to what Ishkanian identifies as the ‘second-generation’ social movements. The EED has provided “essential support to human rights defenders and civic activists unable to obtain support from many donors” in “disturbingly harsh environments” and in emergency situations, particularly when “governments detain civic activists or journalists” (European Endowment for Democracy 2015: 6). The EED budget for 2013-2015 was limited to €22.82 million for the 15 ENP countries (European Endowment for Democracy 2016: 8).

### ***II.III.III. Linkage and partnership model in the EaP Multilateral Platforms***

The Multilateral Platforms created in 2009 display characteristics of both the partnership and linkage models. These platforms count on the possibility to change actors’ behaviour through the socialisation and the logic of arguing. Therefore, the value of normative arguments can be accepted through the process of socialisation (linkage) and through the process of arguing (partnership). The EaP political elites are its target group. It seeks to

“provide a forum to share information and experience”, “facilitate the development of common positions and joint activities”, “foster links among the partners” and “contribute to initiating a structured approximation process” (Commission of the European Communities 2008a: 6).

The multilateral track comprises four hierarchical levels - the EaP Heads of State and Government biannual summit; the annual meeting of the Ministers of Foreign Affairs; the meetings of the four thematic platform (twice a year), that include several field specific among which is Democracy, good governance & stability (Delcour 2011: 7). Delcour suggests that the multilateral track is “an attempt to develop a multi-layered and, to some extent pluricentric and participative institutional framework” (Delcour 2011: 7). The more technical levels of cooperation “allow for open discussions and effective exchange of experience between all participants on an equal footing” (Delcour 2011: 12). It presents greater opportunities for debate on policy and normative issues. However, the EU retains a leading role for “convening meetings, setting provisional agenda, presiding meetings, managing information flows and it also plays a predominant role” (Delcour 2011: 7).

#### ***II.III.IV. External governance model***

The model of external governance is based on the transfer of public administration rules as transparency, accountability and participation, in order produce broader effects of democratic transformation in the EaP countries. It is expected that the change of working methods at a technical level, will lead to “subtle processes of democratic changes behind the façade”(Tina Freyburg et al. 2015: 64). Following sociological institutionalism, the changes initiated in such technical fields are expected to contribute for reforming the public administration, according to the rule of law and to produce a spill-over effect to other policy domains. The target group of this model are the administrative and executive employees.

The specific steps that needed to be developed in these fields are part of DCFTA, which required the adoption of EU *acquis* prior to negotiations. The EU provided technical assistance through the Technical Assistance Information Exchange (TAIEX) instrument and Twinning projects. These projects facilitate the legal approximation through the training provided by experts from key institutions of Member States of the EU. The contents are delivered through trainings, technical assistance in legislation development and institutional visits.

#### ***II.III.V. ENP policy implementation***

The “EU’s democracy-building activities have generally privileged institution-building” (International Institute for Democracy and Electoral Assistance, 2016). This trend is

confirmed by the budget distribution of the ENP support. For the period 2007-2011, 70% of aid “was granted in the form of sector budget support” (Shapovalova & Youngs 2012: 3). This trend continued between 2014 and 2017, when 51% of all ENP funds was disbursed to Multilateral organisations, 30% to public sector institutions and only 3% to Non-Governmental actors (NGOs) (European Commission Development, 2017). In addition, the indicative sectoral breakdown of the Single Support Framework for Armenia, Georgia and Moldova allocates 40-45% of the budget for Public Administration Reform, Capacity Development and Institution Building, as opposed to  $\leq 5\%$  for Civil Society (EEAS, 2015b, 2015a, 2015c).

From 1995 to 2015 the main target fields of the EU democracy support are socio-economic development and state-administrative capacity, while “the most under-addressed components are ‘effective power to govern’ and ‘horizontal accountability’” (Wetzel & Orbie 2015: 238). In the case of Armenia and Georgia, the EU also “focuses on a number of domestic shortcomings (for example electoral regime, social-economic development), and to a lower extent on others (for example political rights, horizontal accountability)” (Wetzel & Orbie 2015: 146). In addition, in the two countries, horizontal accountability and compliance with political rights are negatively assessed by the Bertelsmann Stiftung Transformation Index, but receive only limited attention by the EU. Similar mismatch between democratic weaknesses and EU democracy support is, reportedly, due to the lack of consensus between the EU and Armenia and Georgia on assisting these fields (Wetzel & Orbie 2015: 146).

According to the democratic quality dimensions, the EU democracy support in Armenia, Georgia and Moldova clearly prioritises the procedural dimensions. The exclusive focus on “the institutions and mechanisms of representative democracies” by international actors poses specific risks that are important to be considered (Morlino 2011: 196). In conclusion, the EU uses all four models for democracy promotion described above – leverage, linkage, external governance and partnership. Conditionality and socialisation remain the main instruments. Also the evolution of the normative goals of EU democracy promotion show greater prioritisation of the stability and security values at the expense of a strict normative stance. The definition of democracy as an EU value and the implementation of the corresponding conditionality has been limited until the adoption of the AA/DCFTA.

### III. RUSSIAN FOREIGN INFLUENCE

#### *III.I. Russia's foreign policy values*

The normative foundations and policy development of Russia's external action have been subject to important evolution based on its identity-building process after the Cold War. The contribution of the most influential Russian scholars<sup>8</sup> is grounded in the realist theory. Russia's foreign policy approach is closely linked to the geopolitical perspective on International Relations, zero-sum relations, balance of power and spheres of influence (Leichtova 2014; Lo, 2002). NATO's expansion is seen as a strategy to weaken Russian security or as an expression of Russophobia. The military interventions in Kosovo is perceived as an expansionist expression of Western interests (Leichtova, 2014). In addition, Russia's foreign policy is influenced by the interpretation of its national identity and its international role. The re-emergence of historical debates on its European or Eurasian identity, intertwines with topics as autocracy vs democracy; conservative values vs progressive values; and the right to define what Europe is and who belongs to it (Morozov, 2015b; Samokhvalov, 2017).

Against this background, Russia's foreign policy can be divided in three stages. From 2000 to 2007 it pursued an autonomous external policy, based on "genuine equilateral dynamic of mutual advantage in [its] integration in European and global structures" (Lane & Samokhvalov 2015: 60). Putin recognised that Europe is "a single space of democracy, prosperity and equal security" and "the cradle of democracy and civilisation" (Putin, 2000). The Western capitalist and democratic model was seen as the embodiment of internationally accepted values, which Russia was willing to fully implement (Lane & Samokhvalov 2015). Putin affirmed that "Russia is an inalienable part of Europe", which must "develop not in confrontation [...], but together with it" (Putin, 2000). There was "widespread normalisation and normativisation of the West in the Russian discourse" (Morozov 2015: 109). Commitment to democratic values was expressed in its Foreign Policy Concept (Ministry of Foreign Affairs of the Russian Federation, 2000). The potential of the EU-Russia relations reached its peak in the 2003 Common European Economic Space concept (Lane and Samokhvalov, 2015). The EU and Russia cooperated in security and conflict management more than at any other stage.<sup>9</sup>

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<sup>8</sup> As, for instance, the geopoliticians Dugin or important historians as Narochnitskaya.

<sup>9</sup> As for instance, prospective cooperation in ESDP missions and institutional security cooperation, as Russian presence at the Political and Security Committee; foreign ministers' meetings every three months; summits every six months (Samokhvalov 2017: 175)

Russia's stance towards the international system changed in 2007, when its leaders adopted a neo-revisionist perspective with a more assertive policy and support for the reform of the international system. Russia claimed equality and inclusiveness of the international system that would guarantee the right of emerging powers to influence its normative and material developments (Leichtova, 2014; Lane and Samokhvalov, 2015). A multi-vector foreign policy led to diversified strategic partnerships with other emerging powers (Putin, 2007).<sup>10</sup> Putin's intervention on the 43 Munich Conference on Security Policy in 2007 illustrates this shift towards multipolarity. He claimed that the unipolarity of the post-Cold-War period has led to more "unilateral and frequently illegitimate actions", as well as "greater and greater disdain for the basic principles of international law" (Putin, 2007). The interventions of international organisations are used as means for "interfering in the internal affairs of other [sovereign] countries" (Putin, 2007). The use of military force in peace-keeping operations needs to be sanctioned by the UN, in all cases, except of self-defence (Putin, 2007). This revisionist criticism towards the West expresses Russia's desire to influence the normative system that shapes international behaviour, without questioning its basic values. The 2008 Foreign Policy Concept for the first time introduced the idea of civilisational competition "between different value systems and development models within the framework of democratic and market economy principles" (Ministry of Foreign Affairs of the Russian Federation, 2008).

The conflict in Georgia in 2008 marked a shift in Russia's behaviour – from a normative critical stance towards NATO intervention in the Balkans to a mimicking strategy. Accordingly, Russia justified the intervention in Georgia as peace-keeping operation, in a way similar to the one in Kosovo (Makarychev 2018; King 2017: 40; Morozov 2015). Ivan Krastev points that this apparent contradiction or discursive shift follows the logic of reverse engineering and imitation game - Russia "reconstructs what the West is doing" in order to show the internal lack of normative consistency. In 2015, the same reasoning was used in Crimea intervention, which was justified with Kosovo's precedent allowing Russia to argue that it "is playing according to [Western] rules" (Krastev, 2015).

Russia's intervention in Georgia in 2008 illustrates Russia's realist understanding based on spheres of influence (Leichtova 2014). It has also been interpreted as a manifestation of its imperialist attitudes towards its 'near abroad' (Morozov, 2015) or what Samokhvalov termed

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<sup>10</sup> This trend is expressed in the meetings that President Putin held with Chinese, Indian and Japanese leaders, as well as Russia's active participation in international organisations as the Shanghai Cooperation Organisation and the group of the BRICS countries (Leichtova, 2014).

“Russia’s great power identity” channelled through its desire “to change the fates of nations” (Samokhvalov 2017: 183-186). These identity and power explanations inspired the “Medvedev doctrine”, which expressed Russia’s “privileged interests” in the regions that “are home to countries with which we share special historical relations and re-bound together as friends and good neighbours” (Medvedev 2008; quoted in Morozov 2015b: 110).

Regarding democracy, the 2008 Foreign Policy Concept claimed that its universality should be accompanied by a plurality of ways to achieve it, “respecting national and historic peculiarities of each state in the process of democratic transformations without imposing borrowed value systems on anyone” (Ministry of Foreign Affairs of the Russian Federation, 2008). In 2006 Russian-centred unique adaptation of the idea of democracy was introduced by Vladislav Surkov, deputy head of the presidential administration. Sovereign democracy represented the maximum challenge of European normative monopoly of the definition of ‘universal values’. Putin questioned Western normative superiority, because “we are constantly being taught about democracy. But, for some reason those who teach us do not want to learn themselves” (Putin, 2007). Sovereign democracy was used “to dismiss Western criticism and to ensure Russia’s right to independently interpret universal rights” (Morozov, 2015: 141).

Surkov’s speech “Sovereignty is a synonym to political competitiveness” defined the new political ideology of the party Yedinaya Rossia and deeply influenced the government between 2006 and 2012. According to him, the chaotic experience of imitating Western liberal democracy in the 1990s had allowed oligarchic groups to fully control the domestic economic resources, while liberal democratic parties were not able to gain social support (Cucciolla, 2017). Consequently, the values of freedom and justice could not be fully developed. He argued that even though integration in the global economy is important, Russia needs to maintain control over its sovereignty, its borders and territory. State power, centralised control and anti-oligarchy would establish the limits in which democracy should operate (Surkov, 2006). Thus, sovereignty is a requirement for competitiveness, as currently “the benefits of globalisation are distributed unequally” and some states risk to lose their independence (Pettifer, 2006).

Sovereign democracy was defined as “nationalist, statist and collectivist ideology, that presupposes the domination of the political system by Putin leadership” (Pettifer 2006: 1). It justified an important power-centralisation endeavour through the appointment of regional governors by the Kremlin (Cucciolla, 2017). In addition, the reforms in the field of tax policy, oil revenues and land code, allowed Putin to achieve significant economic improvements, but also opposed the stronger domestic market and the growing state administration. This

contradiction was resolved through “ownership [that] was conditional and dominated by the state with wide discretionary powers” (Gould-Davies 2016:7). Consequently, the ownership and private investment of important companies intertwines with national interests, in a way that links geopolitics and economics in a mutually supportive relationship (Trenin, 2007:95 quoted in Leichtova 2014:21).

The most recent period in Russia’s Foreign Policy began after the 2011 protests of the Bolotnaya square and the end of the limited liberal trends of Medvedev’s presidential mandate (Laine and Saarelainen, 2017). The political discourse evolved towards a conservative and nationalistic exceptionalism that focused on traditional orthodox values as opposed to the Western.<sup>11</sup> This discursive shift was defined as “ideological”, “cultural” and “neoconservative” (Engström, 2014; Melville, 2017; Robinson, 2017) and was explained as Russia’s response to the multiple threats and civilisational competition that the current state of globalisation entails. The colour revolutions in post-Soviet republics and the politicisation of the 2014 events in Ukraine strengthened the geopolitical and zero-sum game interpretation of the EU-Russia relationship (Laine and Saarelainen, 2017; Samokhvalov, 2017). Globalisation was perceived as “a source of ‘objectives pressures’ on Russian national identity” (Gould-Davies 2016: 19) and led to the securitisation of the “traditional Russian spiritual and moral values” (President of the Russian Federation 2015: 29). To focus on Russia’s national identity was a response to the current “demographic and value crisis” (Putin, 2012), provoked “not only [by] objective pressures stemming from globalisation, but also by the consequences of the national catastrophes of the twentieth century”, when Russia’s state collapsed twice (Putin 2013).

The 2013 Security Strategy prioritised the threats on Russia’s “traditional spiritual-moral values”, as “the foreign cultural and information expansion” (President of the Russian Federation, 2015). These traditional values are “spiritual priority over the material, protection of human life, human rights and freedoms, family, creative work and service to the Fatherland, moral and ethical norms, humanism, mercy, justice, mutual help, collectivism, historical unity of the Russian nation, continuity of the history of our homeland” (President of the Russian Federation, 2015). The securitisation of Russia’s identity and nationalism of these conservative values provides a new dimension to its exceptionalism.

From this perspective, democracy can only be built on the basis of independent and sovereign policy, as an expression of “the power of the Russian nation with its own traditions

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<sup>11</sup> Exceptionalism in this case is understood as “foreign policy discourse that is part of society’s debates around its identity as a nation” (Nymalm & Plagemann 2018: 3).

of national self-governance and not by the fulfilment of standards imposed on us from the outside” (Putin, 2012). Therefore, Russia focuses on the “observation and respect of the adopted and applicable law, rules and norms” (Putin, 2012). This definition emphasizes the citizens’ obligations, rather than the state’s commitment to guarantee citizens’ rights. Furthermore, democracy implies that it is possible to change “parties, governments and presidents” in order to control and assess the power, rather than to “necessarily touch the bases of the state and society, interrupt the continuity of the national development or reconsider the questions of sovereignty, the safeguard of liberties and freedoms of the citizens” (Putin, 2012). Furthermore, the rights of the minority “must not [...] put into question” the rights of the majority, as the “natural and right” of defence of values as Christianity and morality (Putin, 2013). Russia emphasized the strong state, which “addresses the main social issues” and prioritises domestic law and sovereignty (Putin, 2012, 2013).

From this conservative perspective, “Euro-Atlantic countries are actually rejecting their roots [...and...] denying moral principles and all traditional identities” (Putin, 2013). Consequently, the path followed by Western democracies leads to “degradation and primitivism, resulting in a profound demographic and moral crisis” (Putin, 2013). This justification brings “religious fundamentalism, [...] collectivism [...], a unique version of patriotism based on the mythology of spiritual bonds, the primacy of the State (statism) and neopatrimonialism” as key values of Russia (Melville 2017: 153). The roots and justifications of these values can be found in different theorisations (as the Eurasian tradition) and mystifications of Russia as a “continental empire and not a nation-state” or as “Third Rome” (Mihalkov, 2010; Melville, 2017). After 2014 the conservative ideas of Dugin, were incorporated in the official discourse (Putin, 2014; Cucciolla, 2017).

The idea of Russian world has been incorporated to Russia’s geopolitical ideology as the basis for the projection of the above ideas in Russia’s immediate neighbourhood. It is a key policy towards Russian compatriots (those “who live abroad and are linked to the peoples historically residing on Russian Federation territory”) (Russian Federation 1999, Art. 1). The Russian World corresponds to Russia’s sphere of strategic interests. ‘Compatriots’ have been broadly defined as “people who are culturally or spiritually oriented towards Russia” (Laurelle 2015: 7; 15). In 2001 Putin described this category as “a matter of personal choice [...] of spiritual self-identification” (Putin, 2001).

In addition, the Russian Orthodox Church (ROC) has a leading role in the protection of ‘traditional spiritual-moral values’ and the development of national identity, as well as the basis

for external influence in the Russian World (Laruelle, 2015). The value-based discourse serves as a fruitful basis for cooperation and mutual support of the Russian state and the ROC. The Church is the most authoritative institution to indicate the moral value of certain political choices or actors. In such interpretations, the ROC prioritizes collective traditional values and supports the patriotic identity sought by Russia's institutions above individual rights (Harzl 2017: 381-282). For instance, personal dignity is framed as responsibility, according to which "an individual is foremost a member of a community which he/she owes love, respect, devotion, and, if necessary (gives) his/her life" (Curanovic 2017: 105).

In conclusion, the evolution of Russia's foreign policy illustrates the presence of both realist geopolitical considerations and identity-based interpretations. The period between 2006 and 2012 was marked by the adoption of a neo-revisionist strategy, according to which Russia questioned the contradictions in the application of international norms by Western powers. Russia questioned Western authority to interpret normative principles. In the case of democracy, Russia provided an alternative interpretation which prioritised sovereignty, due to the possible negative consequences of external interference with the domestic context, but does not question democracy as such (Suslov 2017: 72; Morozov 2015b). On the other hand, the civilizational or conservative approach (after 2012) is concerned that the imitation of Western democratic experience alone can lead Russia's state-civilisation to a destructive crisis (Putin, 2013). In conclusion the evolution from 'sovereign democracy' to civilizational approach constitutes a step towards a more conservative, nationalistic and restrictive perspective on democracy, which contrasts with the EU emphasis on individual and minority rights.

Different interpretations are provided for this shift from 'sovereign democracy' to neo-conservative approach. From a realist perspective the claim for equality between Russia and other international powers illustrates its pretensions in support of the international balance of power (Leichtova, 2014). According to some researchers, the EU political conditionality and the insistence on the shared values as a basis for the EU-Russia partnership, provoked Russian resentment to join an organisation that "claimed the prerogative to decide what was and what was not European" (Lane & Samokhvalov 2015: 61). Connectedly, the lack of consultation and or involvement of Russia, while setting-up the ENP and the support of EU leaders of the Orange Revolution in Ukraine, led to the interpretation of this behaviour as "a tool for geopolitical control over the shared neighbourhood" (Samokhvalov 2017: 37). Post-colonial studies claim that the feeling of vulnerability and the "lasting normative and material dependency" of Russia on Europe "intensifies [its] post-imperial resentment" (Morozov 2015b:139). A complex

constructivist analysis of Russia's foreign policy behaviour in the Black Sea region has suggested that two elements have shaped the evolution of its "great power identity": a "non-reflexive practice of greatness" (seen in its engagement "in changing the fate of nations in the European periphery") and a representational part (according to which the way in which the EU and European powers recognise it, defines Russia's identity interpretation of their and its own behaviour) (Samokhvalov 2017: 253-254).

### ***III.II. Russia's policy framework***

Russia has not developed a unified policy framework similar to the European Neighbourhood Policy. Instead, it mobilises a broad array of foreign policy actions, which are implemented by state institutions and involve a combination of private and public organisations. As a consequence a complex policy framework has been developed. Figure 4 below summarises the policy instruments used and the underlying models for external influence, based on the typologies introduced in Chapter I (p. 11-12).

#### ***III.II.I. Imposition***

Imposition consists in the use of force by external actors in order to influence the political developments in a foreign country (Morlino, 2011). The processes of nation- and state-building in post-Soviet countries in the 1990s were accompanied by the support of pro-Russian enclaves. Russia has increasingly used military power to support secessionist efforts of breakaway regions in neighbouring countries, contributing for the creation of "pockets of autocracy" (Obydenkova & Libman 2015: 110).<sup>12</sup> These enclaves are 'reserved policy domains', in which democratically elected leaders lack the effective power of control and government (Morlino 1998; quoted in Obydenkova & Libman 2015). Russia provided such enclaves with security guarantees (as direct military support and/or the establishment of military basis), discursive support legitimising the secessionist enclaves, and economic support (as trade and economic incentives). Such intervention is observed in several frozen conflicts, including Transnistria (since 1992), Ossetia (since 2008). In this way Russia contributed to the destabilisation of the countries to which these enclaves belong and conditioned the political choices of their elite (Tudoroiu, 2012). On the other side, Russia's military presence in Armenia increases its dependence on Russia as a security provider in the face of possible military aggression by Azerbaijan in the Nagorno-Karabakh conflict.

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<sup>12</sup> "A 'pocket of autocracy' is a geographically defined entity within a sovereign, internationally recognized, democratic or a semi-democratic state, which though the use of authoritarian means upholds de facto independence for a significant period of time" (Obydenkova & Libman, 2015: 110).

Model	Theoretical approach	Target	Mechanism	Outcome	Policy Instrument	Domestic target group
Imposition	Realism (International Relations)	Polity	Force	Support to secessionist regimes	Military or (peace-keeping from Russia's perspective) intervention (Allison, 2014)	Elites (political and military leaders of the secessionist and the national decision-making institutions), and the population of the secessionist regions.
Leverage	Rationalist institutionalism	Polity	Conditionality	Influence on the geopolitical orientation of the countries and/or their democratic institutions	Economic Support (positive and negative incentives in trade, energy and migration)	Elites (political leaders of the national decision-making institutions) and increase broader social support for closer relations with Russia due to the economic costs or benefits.
Linkage	Sociological Institutionalism	Society (civil society and elites)	Socialization	Democratic culture	Rossotrudnichestvo, Ruskyi Mir and other 150 GONGOS; Russian Orthodox Church; Political Party and Parliamentary cooperation; Cooperation in Regional Organisations (EEU, CIS)	Elites (political leaders of the national decision-making institutions) and the society in general
Partnership	Social Constructivism	Society, Polity and sector specific cooperation	Equal dialogue and prioritization of common goals and methods	Ownership/Sovereignty – partners negotiate as equals on the development of democratic culture, institutions and governance.	Cooperation in Regional Organisations (EEU, CIS) and bilateral negotiations	Elites (political leaders of the executive, legislative and judiciary, and relevant decision-making institutions)
Governance	-----	-----	-----	-----	-----	-----

Figure 4. Russia's Policy framework. Source: compiled by the author based on (Borzell and Risse, 2000; Schimmelfenning, Engert and Knobel, 2006; Magen and Morlino, 2009; Korosteleva, 2012; Kneuer and Demmelhuber, 2015; Tina; Freyburg *et al.*, 2015).

The idea of Russian World is part of Russia's legitimization discourse, regarding the need to defend Russian-speaking minorities in such enclaves. In addition, military interventions, presence or threat have been based on the idea of 'sphere of strategic interests' (South Ossetia, Transnistria) and the need of peace enforcement interventions as the NATO operation in Kosovo (South Ossetia) (Makarychev 2018; King 2017: 40; Morozov 2015). Such interventions reduce the capacities to govern and the real possibilities for EU-integration.

Delcour and Wolczuk (2015) explain that due to the realist and geostrategic interpretation of Russia, its reactions are triggered by its perception of "the institutionalisation of the pro-Western orientation" in its sphere of strategic influence (Delcour & Wolczuk 2015: 467). Other analysts claim that Russia hinders democracy in its neighbourhood, because it perceives it as a challenge "to [its] geostrategic interests [...] or the survival of [its] regime" (Risse & Babayan 2015: 384). Therefore, due to its realist interpretation of the regional balance of power and the potentially negative effects on Russian sphere of influence, EU democracy promotion is "seen by Russia as a geopolitical tool used [...] *in contestation with Russia*" (Delcour & Wolczuk 2015: 467). In addition, Delcour and Woulczuk (2015: 467) argue that in the case of Russia these two elements – political regime and geopolitical expansion - intertwine, due to its imperial past under the Tsarist Empire and the USSR. These different interpretations of Russia's intervention illustrate the lack of consensus in the literature on this topic. For some, Russia perceives colour revolutions as a domestic threat, due to a possible contagion (Ademmer, Delcour and Wolczuk, 2016; Delcour, 2016), while for others military intervention was motivated solely by geo-political interests (Way, 2015, 2016; Tansey 2016).

### ***III.II.II. Leverage***

The leverage model applies conditionality in order to influence the cost-benefit calculations and shape the actors' behaviour. Russia takes advantage of Soviet-inherited interdependencies in the field of energy, trade and economic migration (Delcour, 2017a). Russia strategically innovated in its foreign policy through the use "positive-sum economic cooperation to achieve broader zero-sum political goals of influence and domination" (Gould-Davies 2016: 19). Its dominant or monopolistic position in these sectors is used for providing support to friendly regimes or for threatening/sanctioning the adoption of undesired course of action in its neighbourhood. The prominent power position of Russia in the energy sector is the most illustrative example. Its control of vast resources and pipeline networks are the basis of energetic, economic and consequently political dependency of third countries.

Russia's influence on democratic development in its 'near abroad' is mediated by geopolitical and geo-economic reasoning. Russia's provision of subsidised gas at lower prices in comparison to the European market is linked to military, economic and/or political alignment with Russia. For instance, in the case of Transnistria, the provision of subsidised gas and oil might give the impression to domestic public of more positive economic performance, due to the increased availability of economic resources in comparison to a hypothetical payment according to market prices. Similar situation took place when the Armenian government incurred in secret subsidisation of the increased prices of Russian gas prior to the 2013 parliamentary elections (Stepanian, 2013). These events suggest that Russia's gas subsidies contributed to the power consolidation of the Republican Party government.

In addition, geopolitical changes after the 'colour revolutions' in Georgia and Ukraine led to increased energy prices, trade sanctions and reformed migration policies of Russia. During the first years of Saakashvili's government, Russia adopted a significant increase in gas prices, interrupted imports of Georgian products and expelled Georgian workers from Russia (Newnham, 2015). It is noteworthy that the trade sanctions were partially reversed after the shift of parliamentary majority in benefit of Bidzina Ivanishvili's party Georgian Dream in 2012 (Newnham, 2015). In a similar way, Igor Dodon's electoral victory in Moldova was followed by more permissive stance towards Moldovans working illegally in Russia and the possible acceptance of "Moldova's participation in two free trade areas" (Makarychev 2018: 13). The opposite trend was observed in 2014 and 2015 during the adoption of the AA/DCFTA between the EU and Ukraine and Moldova, when their imports to Russia were cancelled (Cenusa *et al.*, 2014). The main reasons invoked by Russia was the possible introduction of EU products through Ukraine, Moldova and Georgia and the acceptance of EU standards that differ from those applied in the Free Trade Agreement with Russia (DeMicco 2015).

This analysis might indicate that Russia does not target revolutionary democratic reforms in these countries, but prioritises the elimination of economic support for un-friendly or geopolitically non-aligned regimes. This raises the question if Russia promotes authoritarianism as such or it seeks to prevent EU and NATO expansion by undermining the establishment of pro-Western governments in its neighbourhood? There is no consensus in the literature on this topic. On the one hand, researchers affirm that Russia supports authoritarian governments in order to prevent democratic contagion within its borders (Ademmer, Delcour and Wolczuk, 2016; Delcour, 2016). On the other hand, Way (2015, 2016) claims that Russia's support to authoritarian government is defined by its geopolitical interests, rather than the aim

to promote authoritarianism as such. Tansey (2016) also supports the argument that Russia aims to influence the foreign policy of its neighbours in order to counter Western influence. This argument is supported by the acceptance by Putin that in 2004, “Yuschenko was welcome to seek a closer alliance with the West and turn his back on Russia, but he should understand that if he did so, Russia was under no obligation to continue to subsidize its energy exports to Ukraine” (Goldman 2010: 144). The lack of the introduction of similar measures in the case of Armenian ‘Velvet Revolution’ and in Kirgizstan also support this point. Therefore, democratic weakening might be seen as a secondary concern for Russia after its geopolitical and geo-economic goals (Way 2018). These measures, however, had limited impact on Georgia as it reinforced its efforts of diversification (Demytrie, 2015; Bumbu, 2016).

### ***III.II.III. Linkage***

#### ***III.II.III.I. Governmental and non-governmental organisations***

Russia exerts influence through socialisation in its ‘near abroad’ through tools based on traditional values. In addition, international organisations are used as the main arena for coordination of domestic policies and for socialisation between their members. As part of the Russian World many public and private entities were established. Since 2008 Rossotrudnichestvo<sup>13</sup> under the Foreign Affairs Ministry supports Russian ‘compatriots’ through the “Programme of State Assistance for Voluntary travel of Compatriots to Russia” and a repatriation policy that gives the possibility to travel and settle in Russia. Since 2014 compatriots can acquire nationality through a simplified legal procedure (Laurelle 2015: 11), which allowed a majority of citizens from the secessionist republics to become Russian citizens. These policies increased Russia’s leverage, giving it the possibility to claim its right to defend Russian nationals. It also promotes the Russian culture and language by running centres linked to the embassies, exchange programmes, grants for students and researchers in Russia, Russian-speaking schools and historical commemorations (Laurelle 2015).

Rossotrudnichestvo also provides financial support to Russia-friendly associations that develop their activities in fields as diverse as support to civil society, Russian minorities, youth and regional movements, think-tanks and election observation (Laurelle 2015). In addition, Russia’s foreign actions are supported by a wide range of organisations. For instance, the Gorchakov Foundation for Public Diplomacy also supports cultural promotion and the beneficial links between the host country and the compatriots. Similar organisations are the

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<sup>13</sup> Rossotrudnichestvo stands for Federal Agency for the Commonwealth of Independent States, Compatriots Living Abroad and International Humanitarian Cooperation

Foundation for Supporting and Protecting the Rights of Compatriots Living Abroad, the World Russian Press Foundation and the International Council; the Moscow House of Compatriots and the Intergovernmental Foundation for Humanitarian Foundation in CIS countries. It has been estimated that there are around 150 Kremlin-affiliated NGOs (Lutsevych, 2016).

The links between these organisations and the state administration are operationalised in different ways. Some NGOs are founded by state institutions, universities, “the state media, the security agencies and large state-owned companies” (Lutsevych 2016: 12). Member of the same institutions are included in their boards. Konstantin Kosachev, the chair of the Foreign Affairs Committee in the Parliament, was member of four organisations (Vojtiskova; *et al.*, 2016). The security apparatus is also represented in the boards of such entities.<sup>14</sup> The annual budgets of the four main organisations (Rossotrudnichestvo, Russkyi Mir, the Gorchakov Fund and the Foundation for Supporting and Protecting the Rights of Compatriots Living Abroad) amounted a total of 55€ million in 2012 and 2013 (Vojtiskova; *et al.*, 2016). Previous research based on the online portal for Russian state contracts has concluded that “the state spends 130\$ million annually on projects worldwide” (Lutsevych 2016: 9).<sup>15</sup> Additional funding is provided by private companies or through informal mediators (Vojtiskova; *et al.*, 2016).

The main topics of interest for these organisations are the promotion of the Russian World, Eurasian Integration and Human Rights in the neighbourhood with specific focus on the protection of the rights of Russian-speaking population. Organisations as the Foundation for the Study of Problems of Democracy and the Moscow Bureau for Human Rights issue reports on Human Rights and Democracy in post-communist and Western countries (Lutsevych, 2016). Also, Russia practices parallel electoral monitoring in the neighbourhood region. The Russian Institute of Electoral Law, the Center for Geopolitical Analysis (Poland) or the Eurasian Council for Democracy and Elections (Brussels), in addition to the CIS organise election observation missions. Their alternative reports are used to legitimise and support the electoral processes that took place in Crimea, Luhansk and Donbas, Abkhazia, Transnistria and Nagorno Karabakh (Lutsevych, 2016).

### ***III.II.III.II. Russia’s Orthodox Church***

The Russian Orthodox Church (ROC) is independent from the state apparatus, but has overlapping interests with it. Due to its central role for Russia’s national identity, the ROC received the “largest share of state grants reserved for non-profit organisations” between 2013

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<sup>14</sup> The director of the Federal Counter Intelligence Service, Sergei Stepashin, was the head of the Russian Association for International Cooperation (Lutsevych, 2016).

<sup>15</sup> As a comparison, the German Goethe Institute received 213€ million in the same period (Lutsevych, 2016)

and 2015 (Laine & Saarelainen 2017: 14). In addition, the ROC maintains close links and counts with the support of oligarchs (Antonyan, 2016; Laine and Saarelainen, 2017). The ROC's influence is essential for Russia's 'near abroad', where it has more legitimacy and social support in comparison to public and political institutions, including the Parliament, the President and the political parties. In Moldova the Orthodox Church is the most trusted institution with 65% of survey respondents having favourable opinion of it (Center for Insights in Survey Research 2017b). It has strong mobilizational capacity and moral authority. It is reported to promote "closed societies" and "intolerant rhetoric" towards issues as Western education, religious minorities and homosexuality (Lutsevych 2013: 9). The ROC discourse and behaviour overlap with Russia's policy-makers in certain Foreign Policy issues.

### ***III.II.III.III. Political parties and media***

Russia has also managed to build stable relationship with ideologically-friendly political parties, groups and individuals. Some of these parties receive support through funding and legitimising discursive support, as well as an international arena for debate. Besides, the far-right or far-left parties supported by Russia contribute for legitimation of Russia's discourse on the weaknesses of international and democratic norms (Polyakova *et al.*, 2017).

Media and social networks are among the key factors for successfully projecting key messages to diverse international audience. The state TV channels have significant presence in Russia's neighbourhood. Recent research on this topic has confirmed that Russia's media coverage of current events reflects "the 'West' as morally corrupt and weak" (Dimitrova *et al.*, 2017). The main narratives depict the EU as "an aggressive and interventionist entity", as well as weak union that will collapse in the future (Potapova 2017: 12). EU democracy is negatively presented as undesirable and its weak or decadent social values are opposed to Russia's Orthodox moral (Potapova, 2017). Connectedly, the feeling of uncertainty among the audience of Russian media is increased by its efforts to "establish the idea that all sources lie" (Potapova 2017:8). This aspect is facilitated by the use of fake photos and reports that have been distributed on internet (Pomerantsev, 2016; Potapova, 2017).

### ***III.II.IV. Partnership, leverage and linkage through International organisations***

Since 2007 Russia adopted a more proactive stance in international and regional organisations (Leichtova, 2014). In comparison to previous initiatives, the EEU is the first post-Soviet international organisation that commits to power delegation in supranational institutions (Delcour, 2017a). It has been promoted as an alternative to the EU, and as a "platform for

structuring relations with the EU, ASEAN and China” (Dragneva & Wolczuk 2017: 5). The institutional organisation of the EEU shares certain features with the EU, but is more pyramidal (Dragneva and Wolczuk, 2017). For instance, the decision of the Commission can be appealed and reversed on higher level and states remain gate-keepers of binding legal acts. After the adoption of the Astana Treaty the Commission cannot bring uncompliant states to the Court of the EEU (Dragneva and Wolczuk, 2017). Moreover, the decisions of the Court are not considered “law of the Union” and they “do not change and/or invalidate any norms of the law of the Union in force and the legislation of the member states, nor create new ones” (Eurasian Economic Union 2015, Section 2, Annex 2).

The first years of the EEU existence made obvious certain contradictions between the “economic and the (geo-)political rationales underpinning” the integration process (Delcour 2017: 71). The EEU integration of Ukraine and Armenia was subject to pressure exerted by Russia, through threats of and imposition of sanctions and trade bans, and even direct coercion in the case of Ukraine (Delcour, 2017a; Kostanyan and Giragosian, 2017a). This procedure shows how the EEU is seen as foreign policy instrument for restricting EU expansion in Russia’s ‘near abroad’, while membership is promoted through hard power and regional interdependencies. The Ukraine crisis had negative effects on the organisation. After unsuccessful promotion of EEU sanctions on Ukraine, Russia unilaterally imposed a Most Favoured Treatment to Ukraine and transit restrictions on Ukrainian goods, which implied that other members of the EEU needed Russia’s permission in order to trade with Ukraine. This development shows that Russia is willing to sacrifice the EEU integration processes for its foreign policy interests (Dragneva and Wolczuk, 2017). In addition, it shows that the logic of arguing proper of the partnership model has been invalidated by unilateral decisions, which in essence are an example of negative conditionality applied among theoretically ‘equal’ partners. Therefore, the EEU rather than only an organisation for equal partnership, can be defined as an instrument used for leverage and linkage in Russia’s neighbourhood.

#### **IV. CONCLUSIONS**

In conclusion, the EU has adopted a normative discourse towards the shared neighbourhood, which has been initiated by a liberal peace perspective and gradually evolved towards principled pragmatism after 2015. Consequently, the initial pretensions for geopolitical ordering have been complemented by a more realist and geopolitical perspective, which prioritises security and stability as preconditions for democracy. Democracy support has been defined in a flexible and versatile way, which allows a range of international actions.

However, the EU's expertise and institutional development has focused mainly on the development of sectorial *acquis communautaire* and less so on the practical strengthening of democracy as a value. As a consequence, the ENP shows weaknesses in the support of system-wide domestic structures, in benefit of narrow sector-specific regulations. In addition, the EU support in the field of democracy was defined by a clear prioritisation of institution-building, through socialisation and governance mechanism. In addition, the AA/DCFTA recurs to conditionality in support of democratic transformation, which is supported on expertise of other international organisations as the Council of Europe.

On the other hand, Russia's normative positions have evolved from an open neo-revisionism towards nationalist and neo-conservative approach, which has also reinforced the geopolitical interpretations of the regional context and of the EU actions. Sovereignty and the right of independent choice of a development path are central in Russian discourse and hypothetically imply certain openness and capacity to adapt the values of democracy to the domestic context. The civilizational or conservative approach introduced after 2012, however, underlines that the imitation of Western democratic experience alone can lead the Russian state-civilisation to a destructive crisis (Putin, 2013). In conclusion the evolution from 'sovereign democracy' to civilizational approach constitutes a step towards a more conservative, nationalistic and restrictive perspective on democracy and human rights, which contrasts with the emphasis on individual and minority rights that is essential for the EU.

Interestingly, in the last years Russia uses more value-based arguments, while the EU's approach has evolved towards principled pragmatism. In terms of values, while the EU emphasizes guarantees for citizens' rights (as "the independence of the judiciary, access to justice, and the right to fair trial" (European Union & Republic of Georgia 2014: Art. 13), Russia prioritizes key traditional-moral values that underscore the relationship between state and society and builds into the collective national identity. Therefore, the EU's specialization in technocratic norm-development has evolved towards a definition of EU values in relation to an institutional framework, which guarantees citizens' rights. On the other side, Russia has recurred to different historic civilizational discourses that reinforce the role of state norms in defence of its national identity and collective rights. Due to the longer tradition of Russia in the arguments that serve as the basis of its neo-conservative discourse, they appear to have a very consolidated character. In addition, Russia challenges the Western authority to interpret normative principles as democracy, due to certain internal contradictions of its behaviour.

In contrast to the EU, Russia has proved its capacity and willingness to use imposition in order to change the path of action of its neighbours. This has led to reduced control of the state territory, to long-term frozen conflicts and pockets of autocracy. Russia counts with strong leverage instruments, due to its capitalisation of historical interdependencies. In terms of socialization it has developed a broad network of cooperation between public and private organisations that support the traditional values of the Russian World and promote Russia's interests. In this aspect, it also counts with important cultural, religious and language prevalence as it benefits from links developed over centuries. Consequently, it appears that Russia uses a broader and more developed array of instruments for external influence, which not always targets democracy as such, but more or less directly affects democratic deepening.

In conclusion, the EU and Russia represent a mutual challenge to each other's international identities, which has led the EU to adopt a more realist stance, while Russia recurred to traditional conservative discourse, while mimicking Western values. The discursive and policy innovation in the last years frames the domestic dynamics for the countries in the shared neighbourhood. The next chapters explore the way in which these discourses and policies contribute or undermine democratic deepening in Armenia, Georgia and Moldova.

## **PART II RULE OF LAW**

# ***IV CHAPTER. ARMENIA***

## **I. INTRODUCTION AND CRITERIA FOR ASSESSMENT**

Rule of Law is a key dimension for the analysis of democracy in the post-Soviet context, due to the legacy of strong, personalist presidential system, that dominates the other institutional branches. In addition, the informal connections between state institutions and neopatrimonial networks are expected to weaken the reform processes in this field. The consolidation of an independent Judiciary in post-Soviet countries is a key challenge, due the legacy of a centralised power vertical. The fight against corruption is especially challenging, given the blurring boundaries between state and society under the influence of neopatrimonial networks. This chapter will discuss the reform processes in the field of Rule of Law in Georgia, Armenia and Moldova. A criteria for assessment of the level of democratic deepening will be presented before tracing the reform processes in the three country. In addition, the consequence of the reform for the citizens' freedom and equality will be discussed.

The study of the Rule of Law, and of the quality of democracy in broader sense, needs to take into account the relative state of transition or consolidation of the political regimes considered. The analytical criteria for the assessment of the quality of democracy in this research is adapted for the study of hybrid regimes. In such context democratic norms are not equally developed and internalised by citizens and politicians to the same degree as in consolidated democracies, where "several features can be taken for granted" (Morlino & Palombella 2010: 52). The empirical analysis in such conditions requires the consideration of the implementation of the norms beyond their adoption as legal acts.

In hybrid regimes it is possible to observe the presence of "only superficially efficient bureaucracies" and the use "of the law as a genuine 'political weapon'" (Maravall 2002; quoted in Morlino & Palombella 2010: 53). The instrumental use of judicial acts in support of political domination by the incumbent elite or economic groups weakens the quality of democracy. Moreover, the widespread cultural perception in certain countries of the "law as a severe [or useless] to realizing one's interests that should be circumvented in any way possible" affects the social compliance with democratic norms (Morlino & Palombella 2010: 53). In support of this point is very illustrative the Bulgarian saying that "law is like a door in the middle of an open field. Of course, you could walk through the door, but only a fool would bother" (Krygiel 2008: 13). Such social perception weakens the Rule of Law and affects negatively all other democratic dimensions, undermining the credibility and legitimacy of the institutions.

The dimension of rule of law is concerned with the capacity of the state to enforce norms as a limitation of any arbitrary exercise of power. Its practical development is fundamental as it is the cornerstone of all dimensions of democratic governance (Magen & Morlino 2009). It invokes the supremacy of law and implies “the capacity, even if limited, to make authorities respect the laws, and to have laws that are non-retroactive, publicly known, stable and universal” (Morlino, 2011: 196). The sub-dimensions of Rule of Law are individual security and civil order; independent judiciary and modern justice system; institutional and administrative capacity to formulate, implement and enforce the law; effective fight against corruption and security forces that are respectful of citizen rights and are under civilian control. This dimension is central for what Krasner defines as “domestic governance” - “the formal organisation of political authority within the state and the ability of public authorities to exercise effective control within borders of their own polity” (Krasner 1999 in Risse 2011: 3).

Specifically, the establishment of an independent Judiciary in post-Soviet systems is a key challenge, due the continued legacies, embedded in the principle of “unity of state power, coupled with the ideological dominance of a single party parliament” (Rakic-Vodinelic et al. 2012: 15). The fight against corruption presents similar obstacles, given the blurring boundaries between state and society under the influence of powerful neopatrimonial networks. Given these specificities of post-Soviet hybrid regimes, this research focuses on the reform processes of the Judiciary, Prosecutors’ offices and Anti-corruption system in Armenia, Georgia and Moldova. These aspects play a key role for the effective law-enforcement capacity of the state.

The constitutionalist principles of democracy establish that power is exercised legitimately only if it is limited by the separation of powers as a mechanism for restraining the sovereign. The Judiciary plays a central role for implementing this principle and for keeping the “public officials accountable to the law” (Piana 2010: 66). This interdependence between Rule of law and accountability also applies to the Judiciary. The most important principles required for the correct functioning of any democratic judicial system is its impartiality and independence, due to the need to check and counterbalance its links with politics and society.

In the implementation of these general principles several models have developed, as a combination of specific institutional frameworks, informal practices, organisational and legal cultures. These models have found different ways to strike the balance between the principles of Rule of law and Judicial independence. They also reflect different historical developments and cultural conceptions of sovereign power. For instance, the British ideal type (common law) of constitutionalism aims to prevent any excesses of executive power. For this purpose, the Judiciary functions “as a mechanism of power-constraint” and protection of the citizens’ rights

(Piana 2010: 69). In this system, the persistence of jurisprudential decisions provides the basis for the “impartiality of the common law courts” and guarantees “the implementation of the rule of law” (Piana 2010: 69). The system is organised according to the British conception of the public interest as “separate from that of the state” and “often in direct conflict with the interest represented by the government” (Langer & Sklansky 2017: 102, 313). In the common law type of judicial system, the expertise and “inter-operability of know-how” guarantees the accountability in a “horizontal model of power” (Piana, 2010: 15).

The prosecutor in the British system has “a high degree of professional autonomy” (Langer & Sklansky 2017: 313) and is a party in the judicial case. His work is legitimised by and accounted for through a highly transparent policy system. The prosecutorial accountability and record-keeping is not centralised, but follows the logic of charge teams that reflect “the segmentation of the criminal justice process and divides the “ownership of the case file” among more than one prosecutor (Langer & Sklansky 2017: 103). Consequently, the processes are split into clearly differentiated decisional steps that are reviewed separately by different national inspectorates. This institutional set-up leads to greater transparency and shared accountability among the different actors involved in the prosecution process. The British Attorney General (who represents the public interest) is politically appointed and is in charge of appointing the Director of the Public Prosecution. In addition, his right of discretion is broadly recognised and closely regulated (Langer and Sklansky, 2017). A unique feature of the prosecutors’ service in the United States is their popular election, which gives them democratic legitimacy and allows them to count with “the most untrammelled discretion available in modern government” (Langer & Sklansky 2017: 253). Due to the politicization of crime in the last decades, electors have supported harder criminal justice, which has led to harsher laws, stricter implementation by the prosecutors and increased rates of incarceration in the United States in the last decades (Langer & Sklansky 2017).

In civil-law systems, judges have a much less political role. Traditionally subordinated to the monarchy, in the XIX century the judiciary remained part of the administration. The French political tradition understands that the elected “executive is supposed to protect citizens from excess of unelected judges” (Langer & Sklansky 2017: 311). Its legitimacy is based on the will of the parliamentary majority and on the “law ‘made’ by the will of the people” (Piana 2010: 69 - 70). The judges focus strictly on norm-enforcement as an a-evaluative and a-interpretative application. Judicial independence is guaranteed by a limited residual, not creative law interpretation. The state aims to create a “bureaucratic model of judicial governance”, in which judges are selected as civil servants and develop a similar *esprit de*

*corps* (Piana 2010: 70). The guiding principles are organisational socialization and the respect of seniority, entrusted to the judges' hierarchy as the main reference group (Piana, 2010).

In the last decades the focus on judicial independence was reinforced in the Latin model (Italy, France, Spain and Portugal). Two types of Judicial independence need to be taken into account. Firstly, external independence refers to the relations that exist between the Judiciary and other branches of power. Judges need to act as a check of the political power and independently intervene in political cases. A key feature of Neo-Latin judicial systems is the "scepticism for the influence of the executive on the judicial field (Piana, 2010: 17). Secondly, internal independence refers to the "guarantees aimed at protecting individuals from undue pressures coming [...] from other judges" (Guarnieri, 2010: 225). A detailed provision of institutional guarantees address these goals, as for instance the arrangements for "appointments, transfers, disciplinary proceedings and career patterns" (Guarnieri, 2010: 225).

The High Council of Justice (HCJ) was introduced in an increasing number of states in order to limit the influence of and to regulate the relations with other branches of power. The role of this institution varies according to the role that it is assigned in defining the institutional aspects, as career and disciplinary proceedings etc. The balance between judicial and non-judicial members of the HCJ reflects the degree of its independence, which on is also defined by the extension of their functions. An HCJ that is entrusted with more relevant functions, will be provided more important institutional guarantees for independence, as in Italy. On the contrary, the HCJ in France in the period between 1958 and 1993 was largely dominated by the president and enjoyed limited nomination prerogatives (Guarnieri, 2010). In the Neo-Latin model, as in France, the Court of Cassation is the main appeal institution (Piana, 2010).

The Prosecution service in France prioritises democratic accountability over independence. The prosecution belongs to the standing judiciary and is "hierarchically accountable to the [...] Minister of Justice" (Langer & Sklansky 2017: 80). It implements the "governments' criminal justice policy and must act within the guidelines set by its superiors and the Ministry circulars" (Langer & Sklansky 2017: 80). The institutional culture rewards subordination, loyalty and conformity, as well as "the capacity to implement penal policies", "to be part of hierarchical relations" (Langer & Sklansky 2017: 81, 118). Hierarchical evaluations based on these values are used for professional promotions, transfers or disciplinary proceedings. Superior prosecutors have the right to re-allocate cases and to substitute prosecutors according to their assessment. In France, unlike most Latin countries, the prosecutors are free "to start an action or dismiss a case" and they need to justify their decisions only in limited number of situations (Guarnieri, 2010: 234; Langer and Sklansky, 2017).

Additional checks are provided by the overlapping competences of the investigative magistrates in considering the most serious crimes (Langer & Sklansky 2017).

A key feature of the French model is the inclusion of the prosecutors in the judicial corps. The adoption of the same socialisation patterns provides guarantees for their independence. The “joint membership in a unified professional body”, “the same training and professional experience” of judges and prosecutors, socializes them and leads to the internalisation of judicial ethics and impartiality (Langer & Sklansky 2017: 128). This organisational feature creates a “distinctive professional ethos in that they are first and foremost public servants tasked with protecting the general interest” (Langer & Sklansky 2017: 129). In the last decades researchers observed that the adoption of new managerial culture and the increased judicial independence in the Latin culture was accompanied by “a new, more activist, political role of the judge” (Guarnieri, 2010: 235; Piana, 2017). Judges in countries as France and Italy are willing to act with greater autonomy. This trend is accompanied by the action of powerful unions, which contributes for increasing judicial and prosecutorial independence. On the other side, the transfer of executive prerogatives to bodies as the HCJ, has strengthened internal corporatist interests, which are channelled through judicial factions and unions, threatening in this way the individual independence of the judges (Guarnieri, 2010).

The third, German type of constitutionalism is based on the procedural correctness of the law, which depends on the respect of the legal acts and the fundamental rule of the state. Unlike the Neo-Latin model, where the executive is seen as the main source of external influence, the main concern in this system is the interference by overwhelming legislative majorities that might seek to overrule the fundamental norm of the state. For this purpose, the independence of judiciary has been secured by the institutionalisation of strong judicial review and the constitutional court (Piana, 2010). In the French and German constitutionalism, the selection, appointment and promotion of magistrates provide guarantees for the judicial independence, as it is based on the judges’ legal knowledge and their seniority. As in the public administration, “the procedural coherence and formal accountability” are the basis for judicial impartiality (Piana, 2010: 19). The socialisation of judges in the “transparent and equal application of legal norms” in the German model is based on the reference provided by the legal school (doctrine) (Piana, 2010: 19). In the German model, unlike in the French where the Court of Cassation exists, the Courts of Appeal are the main appeal institutions.

As in France, the German prosecutors’ offices are part of the Ministry of justice. However, in Germany they are “apolitical legal technocrats” that independently from any other institutions have to act as objective “guardians of the law” (Langer & Sklansky 2017: 142,

146). Prosecutorial discretion is very limited by the criminal code and legal decision-making is “reduced to a process of categorising the facts into correct legal categories” (Langer & Sklansky 2017: 148). Prosecutors’ actions and decisions need to remain independent from both the police and the judiciary. Legal accountability is exercised by the parliament through investigative committees. In addition, the peer review is an effective informal method for socialisation. The Ministry of Justice has the capacity to issue broad instructions regarding the handling of certain types of cases, but not to intervene in specific cases. The internal accountability in the prosecution service concerns mainly the efficiency of the case-handling. Prosecutors are public servants with life tenure and the “leadership changes [...] are largely insensitive to electoral results” (Langer & Sklansky 2017: 142). German prosecutors have the duty to “investigate the facts both for and against the defendant” (Langer & Sklansky 2017: 146). In some German states, however, the possibility of rotation between the Judiciary, the Ministry of Justice and the Prosecution office might be used by superiors to punish or reward loyal behaviour of the employees (Langer & Sklansky 2017).

These models illustrate how different democracies have reached a balance between prosecutorial independence (discretion) and democratic/legal accountability, based on their judicial traditions. In order to assess the Judiciary and prosecution reforms introduced in Armenia, Georgia and Moldova, it is required to analyse the way in which this balance between independence and accountability has been solved in each specific case. The institutional framework in which the judiciary and prosecution are embedded, their relations with the executive and legislative is key for understanding their broad capacities and legitimacy basis.

Regarding the impact of judicial independence to Rule of Law and democratic freedom and equality, it is important that in the last decades, different internal and external pressures arise and need to be controlled. For instance, competition between judicial factions and political actors will inevitably influence the outcomes of this procedural dimension. Therefore, judicial independence needs to be assessed in terms of judicial impartiality and democratic equality. For this purpose, the main questions to be addressed refer to the way political pressure is exerted, how accountable it is and how abuses are prevented through effective checks (Guarnieri, 2010). Therefore, the parallel analysis of the trends of domestic competition and participation is essential. Connectedly, the politicisation of the judiciary in the last decades has been accompanied by increased media attention which has become an important instrument for political influence, to the degree that it has been termed judicial populism (Guarnieri, 2010).

The different models described above have undoubtedly influenced the transformations in the post-Soviet countries studied in this research. The independence of the judiciary in post-

Soviet countries is one of the main challenges for the transition to democracy. Following the centralised tradition of Soviet states, constitutionalism was defined by the unity of state power and the judiciary was subordinate to the legislative and loyalty, instead of competence, was the key guiding principle for recruitment (Piana, 2010). Judges complied with direct orders from political leaders and the usually informal practices such as “telephone justice” were normalised and justified (Russell and O’Brien, 2001).<sup>16</sup> In this context the judiciary was “formally centralised, but informally captured by local groups, formally legitimate to penetrate society, but actually unable to do it” (Piana, 2010: 67). Such constitutional tradition requires both institutional and cultural changes through socialisation of judges, politicians and administrative employees of the importance of judicial independence. Due to different reasons as the aspirations of many post-Communist and post-Soviet countries to become members of the Council of Europe, the French and German constitutional traditions have influenced most post-Soviet countries (Russell and O’Brien, 2001). In spite of the introduction of jury trials in 2011 in Georgia, the trend of centralised judiciary following the continental model has been the dominant trend. On the basis of the aspects discussed above, a detailed analysis of the features of the Judiciary and prosecution needs to take under consider the following sub-dimensions:

- Legal accountability focuses on the legal control and the review processes of the judicial and prosecutors’ decision and the mechanisms of appeal, by “the procedural guarantees of due process” (Piana 2010: 74);
- Institutional accountability refers to “the appointment, selection, promotion and disciplinary control” of the prosecutors, in addition to the procedure for election of the individuals that work at the highest levels of the hierarchy, as Prosecutor General and his deputies (Piana 2010: 75);
- Societal accountability focusses on the control mechanisms accessible to private actors, as citizens and civil society organisations;
- Professional accountability “refers to the control exercised by peers on the basis of their knowledge and expertise” and is “strongly linked with the allocation of moral and cognitive costs” (Piana 2010: 75).

Based on these criteria the different aspects of the independence-accountability relation will be analysed and the balance between the different dimensions will be considered. The aim of such assessment will be to define to what degree the recently introduced reforms guarantee

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<sup>16</sup> Telephone justice refers to a practice when judges take their decisions not according to their judgements, but to the orders received from superiors or from political leaders of the other branches of power.

institutional independence and accountability. In addition, the positions of the different domestic and international actors towards these reforms will be considered.

Connectedly, it is important to remember one key element of the minimalist definition of democracy - the requirement that the democratic institutions “are not subject to or conditioned by non-elected parties or exponents of other external regimes” (Schmitter & Karl 1992: 45 quoted in Morlino, 2011: 30). The importance of informal mechanisms of accountability becomes clear when the horizontal procedural dimensions (participation and competition) and the substantive democratic qualities (freedom and equality) are considered. In this way, informal mechanisms of influence might be instrumentally used by non-elected actors in order to influence democratic decisions-making, as would be the case of influential political personalities and economic groups. Such informal mechanisms affect negatively the equal right of participation and competition in the political system. Furthermore, they would influence negatively the electoral and inter-institutional accountability in the country, as it would imply the lack of significance of the formal institutional mechanism for accountability.

Due to the capacity of values, attitudes and individual interpretations to influence judicial decision-making it is important to reflect on the informal mechanisms of accountability. In case of contradiction between formal and informal norms, judges and prosecutors are expected to achieve an inward-looking control and mobilize interiorized norms. In addition, the reputational and ethic costs raised by a possible dissonant reasoning with a group, with which the judge/prosecutor feels associated is an essential mechanism for professional accountability. Such concerns illustrate the importance of socialization in democratic norms and the level of implementation of the norms adopted (Piana 2010: 79).

### ***III.1. REFORM PROCESSES IN RULE OF LAW ARMENIA***

The reform process analysed for Armenia covers the Judicial and Prosecution reform in the period 2012-2016, which was introduced by the 2012 Strategy for Legal and Judicial reform. In addition, the recent developments after the Velvet Revolution in 2018 will be also considered, due to its impact on the Rule of Law in the country. For this purpose, firstly the reform process will be analysed, including its implementation. This first part will be followed by the study of contextual factors, the participation and competition dynamics and the international factors that have influenced the reform process and its outcomes. Lastly, the impacts of the reforms for citizens’ freedom and equality will be also considered.

The development and implementation of the Strategy for Legal and Judicial Reform for the period 2012 – 2016 took place in the framework of the EaP. As in Moldova and Georgia, the Strategy was adopted with the active “support of the EU-funded technical assistance, through an inclusive approach involving all relevant actors: Ministry of Justice, Judiciary, Prosecution, Police, Advocates, civil society and donors”, which underlines the central role played by the EU in the beginning of this reform process (European Commission, 2017a: 2). In spite of counting with such an inclusive process for the Reform Strategy in the Judiciary, it is essential that the legal reform process in Armenia is highly centralized, formalised and dominated by the government (OSCE/ODIHR, 2015). This dynamic affects the norm development and implementation at a later stage, as they lack social and political consensus. Such procedure was followed by the Ministry of Justice in spite of the EU support for an open and participative reform process.

In terms of content the Strategy for the Legal and Judicial reform was defined as the first comprehensive policy document in this field, which gave place to expectations in the EU for the achievement of its goals. Like the reform strategies in Georgia and Moldova, the one in Armenia is divided in 9 pillars: “justice sector coordination, penitentiary reform, criminal justice, civil justice, administrative justice, functional judiciary, prosecution, advocacy, and services to citizens” (European Commission, 2012c: 2).

The first reform efforts in the field of Judiciary were made in 2014, when the Judicial Code of Armenia was amended. The changes introduced by this reform were assisted by international actors as the Council of Europe and the European Union. The main legal and institutional changes in the Judiciary as a consequence of the implementation of the Strategy, were the establishment in 2012 of the School of Advocacy, as an institution in charge of the training of lawyers; the introduction of E-notary system and Justice Academy in 2014. In addition, rules of performance evaluation by the Evaluation Committee of the General Assembly of Judges (GAJ) were also adopted in 2014. The 2014 amendment clarified to certain degree the institutional framework. For instance, the Council of Court Chairs (CCC) is not anymore in charge of “ensuring the normal operation of the system” (GRECO, 2015: 26).

In addition, an Ethics and Disciplinary Committee was appointed as part of the General Assembly of Judges. Even though the introduction of this new body is considered as a positive innovation, international observers underscored the need of additional changes, in order to guarantee fair functioning of the disciplinary proceedings. For instance, the parallel competence of the Minister of Justice, the Chair of the Court of Cassation and of the Ethics and Disciplinary Committee to initiate disciplinary proceedings seemed contradictory, given the possibility of the

executive (thought the Minister of Justice) to influence this process and in this way to reduce the effective independence of the Judiciary. Furthermore, the vague wording of some of the conditions that can be used for disciplinary liability include the “regular violations or serious violation of the rules of judicial conduct”, allows the use of unjustified proceedings against judges (GRECO, 2015: 42). In addition, judges do not have the possibility to appeal such disciplinary proceedings.

The need to guarantee fair and independent disciplinary proceedings became even more relevant, after the Ombudsman published in 2013 a study of the main challenges to judicial independence. Some its most relevant conclusions refer to the interference in the individual independence of judges. Based on the detailed documentation of such cases, the Ombudsman concluded that “judges who do not reach an agreement with the Court of Cassation on the outcome of sensitive cases [...] and prefer to make their own decisions are subject to high risk of pressure and prosecution” (GRECO, 2015: 45). Such cases were taken upon by international organisations as GRECO and the Venice Commission that have also concluded that “unfair use of disciplinary proceedings against judges as means of pressure aimed at influencing their decisions or retaliating against them” (GRECO, 2015: 42). As a consequence, individual judges have adopted the practice to “consult with other judges prior to making their judgements [...] out of fear that the judgement will be reversed and the judge subject to disciplining for illegal ruling” (GRECO, 2015: 42).

In spite of the 2013 and 2014 amendments, the basic features of the institutional framework were retained and continued allowing both internal and external interference in the judiciary. In addition, the reform process did not take stock of the weaknesses of the Judicial independence reflected in the Ombudsman’s study, which, however, was recognised by both domestic civil society organisations and international actors as GRECO and OECD. This study was domestically and internationally recognized due to its thorough mapping and illustration of the challenges posed to Judicial independence. However, the Council of the Association of Judges and public authorities harshly criticized its findings.

Another weakness of the Judiciary, as identified by the Venice Commission, GRECO, and the Ombudsman is the hierarchical system of the Judiciary in Armenia, where individual independence of judges is not guaranteed. Therefore, judges from higher-level courts often interfere with the decisions of lower-level judges, who on their side ‘seek instructions from higher-level courts – in particular those of the Court of Cassation’ (Venice Commission, 2014b: 4). Connectedly, the central role of the Court of Cassation was criticised. One weakness of the evaluation system is that it does not apply to the Court of Cassation, giving place to inequality among the judges. This weakness led to demands for the adoption of effective evaluation system and disciplinary proceeding in order to counter this practice.

Secondly, the institutional structure of the Judiciary was also subject to harsh criticism, due to its negative effects on the external independence of the Judiciary. In spite of the international and domestic criticism, this aspect has not been addressed by the 2014 reforms in the Judicial Code. For instance, the Council of Justice (CoJ) is composed of 5 members selected by the General Assembly of Judges (GAJ), 2 members selected by the President and 2 members by the National Assembly. The four politically nominated CoJ members are replaced when new Parliament and President are nominated, which raised doubts among Venice Commission and GRECO experts regarding their independence. Additional guarantees for the independence of the CoJ are essential given the importance of its functions as the “selection of judges and court chairs, disciplinary proceedings and [...] the termination of judges’ powers” (GRECO, 2015: 27).

Furthermore, two more Judicial bodies of self-governance coexist apart from CoJ. More specifically, GAJ which includes all judges, “is the highest body of judicial self-government”. However, its functions are limited to considering issues on the normal operation of the Judiciary and to nominating 5 of the CoJ. On the other side, the Council of Court Chairs (CCC) focuses on very important functions of the judiciary as the management of “budget, human resources, training of judges and case management” (GRECO, 2015: 26). In spite of the explanation provided by Armenian authorities that the CCC deals with “day-to-day issues of operation of the Judiciary” (GRECO, 2015: 26), it is clear that its functions touch upon key aspects of judicial fairness and freedom. For instance, the CCC has the capacity to interfere with individual independence of judges, due to the possibility to “temporarily re-assign judges without their consent” (GRECO, 2015: 31). Both the Venice Commission and GRECO recommended the transferring of functions from the CCC to the CoJ, in order to reduce the institutional overlap and to guarantee access of ordinary judges to key judicial processes, given that the role of the CCC concentrated decision-making powers in court chairs. The key influence and to certain degree domination of court chairs over the judicial processes and the consequent risks that this implies for individual independence of the Judges has been recognised by domestic authorities (Venice Commission, 2014b). In addition, the role of the chair of the Court of Cassation has also been criticised due to the concentration of power in his figure. For instance, he presides the CCC, convenes meetings of the GAJ and chairs the CoJ (without voting rights).

When analysing the external independence of the Judiciary, it is important to acknowledge that the role of the President allows for significant external influence on the Judiciary and makes possible high concentration of power over the institutional framework of the Judiciary. For instance, the nomination process of the court chairs entails significant opportunities for exerting external influence on the Judiciary, given the broad powers of the CCC. The court chairs are nominated by the President, with the non-binding opinion of the COJ. In addition, the President of

Armenia approves the lists of judges prepared by the CoJ, the promotion of judges, the court chairs, the dismissal of judges, and the appointments of the CoJ members. Given that the President is not obliged to justify his decisions and the lack of appeal procedure, the Council of Europe and GRECO argued that he “has real decision-making power and wide discretion” (GRECO, 2015: 33).

### ***II.II. IMPLEMENTATION OF THE REFORM PROCESS***

In relation to the negative assessment of international actors as GRECO and the Council of Europe, the EU 2015 monitoring report expressed only limited criticism. A potential reason for this might be also the explanation provided by Armenia’s government that the Judicial code amendment adopted in 2014 was going to be further developed by the Constitutional reform to be adopted in 2015. This Constitutional reform was announced the day after the President Sargsyan announced the U-turn towards EEU membership and abandoned the negotiations for AA/DCFTA with the EU. Among the main goals of the Constitutional amendment was to balance the Presidency with the other power branches, including the Judiciary. For many years Armenia had experienced domestic and international criticism, due to the lack of balance and the dominant role of the President. In this sense it is understandable that a Constitutional amendment would address also the relative balance with regard to the Judiciary.

The process of constitutional reform was developed by a Commission established by the President. Its members were mainly domestic and international experts and judges. The new Constitutional text was adopted through a referendum in December 2015. Relevant changes in the Judiciary included the introduction of the Supreme Judicial Council (SCJ) as self-governing body that aims to guarantee judicial independence. It is composed of 5 judges selected by GAJ and 5 members selected by the Parliament with at least three fifths of the votes. The chair of the SCJ is selected among its members. In addition, judges cannot be transferred without their consent anymore. This reform was positively assessed by international actors given that it reduces the influence of the court chairs through the elimination of the Commission of Court Chairs (GRECO, 2017). On the other side, the President retains his key role in the nomination and promotion of judges. However, he now has to motivate his decision, which can be overturned by the SCJ. In addition, the SCJ can decide on the dismissal of judges and the constitutionality of appointment or dismissal decisions can be challenged.

On the other side, the Minister of Justice still has the capacity to initiate disciplinary proceedings. This prerogative is “not fully compatible with judicial independence” (GRECO, 2017: 9). In addition, disciplinary proceedings can be challenged only in terms of their constitutionality, which does not provide effective guarantees against their use as a mechanism for exerting influence on individual judges and reducing their independence. In conclusion, in

spite of the positive advancements, both domestic and international observers agreed that the constitutional reform and the subsequent change of the Judicial Code did not significantly contribute for guaranteeing judicial independence. Even if certain guarantees for external independence were provided against the interference from the executive, the individual impartiality of judges is still subject to be influenced by superiors.

The reform of the Prosecution office was addressed only after the adoption of a new anti-corruption strategy for the period 2015-2017. The most significant change in the Prosecution system during the period considered is that after the 2015 Constitutional amendment a Parliamentary committee, instead of the President, recommends the candidate for Prosecutor general. The Parliament approved the Prosecutor general with at least three fifths of all votes. The dismissal of the Prosecutor General with three fifths of all MP is still possible if he has “committed a violation of the law” or “the code of conduct of the prosecutors” (GRECO, 2017: 9). In spite of GRECO’s opinion that this procedure is satisfactory, it has been criticised by domestic actors, because it *de facto* guarantees the capacity of the Republican party to nominate and dismiss the Prosecutor without involving the opposition in this decision. Lastly, as discussed below, the EU assessments of the reform progress and programme documents reflect a more critical stance after the adoption of CEPA in 2017.

The lack of will and the slow development of the reform processes in the field of anti-corruption can be explained with the disadvantageous preferential fit of this reform for the incumbent political elite. The implementation of reforms for increasing judicial impartiality, involves the elimination of instruments for exerting political influence on ‘independent’ institutions as the Judiciary and the Prosecution. The adoption of reform measures that do not fully guarantee external and internal independence of the judicial system, overlaps with the interests of the incumbent political elite as in this way they fully control key institutional positions in the political system. This effective control of the executive over the Judiciary has affected negatively citizens’ trust in the judiciary, which has remained low throughout the 2010 decade. The lack legitimacy of public officials in the Judiciary is reflected also in the efforts of the next government (after 2018) to implement vetting strategies in order to remove those judges that are considered as corrupt or politically linked to the previous government.

In 2018 a relatively small opposition faction in the Parliament led by Nikol Pashinyan initiated protest actions against the government of the Republican Party (RPA), which led to the eventual resignation of the RPA government and change of power. The reasons of the Velvet Revolution and its consequences are studied in detail in Chapter VI, due to its links with Inter-constitutional Accountability. However, the continuity between the Velvet Revolution

and the social protests that developed during the 2010s was reflected in the leadership and in the adoption by the revolution some slogans of these second-generation social movements described above (as “We are the owners of our country”).

In addition, the 2018 mobilisations rejected those corrupt and authoritarian practices of the Republican party that were opposed to democratic values as freedom, dignity, tolerance and justice (Ishkanian, 2018). This continuity between the second-generation social movements and the Armenian protests illustrates the emergence of new channels of social participation based on street protests. The legitimacy of these protest movements was strengthened, due to the impossibility for the opposition to consolidate and use institutional channels of representation, because of the use of administrative and corporative resources against them. The alternative path to change of power are the social mobilisations after long period of delegitimizing of the policy-making processes in the country. A new super-majority government was formed in 2018, due to the extensive representation of the My Step party in the Parliament. It is illustrative that the RPA is not anymore represented in the Parliament. The new government established by the Pashinian-led “My Step” represented an almost complete renewal of the elite, as it is composed to great extent of former civil society representatives.

On the other side, one of the most important debates at domestic and international level since 2018 concerns the possibilities for effective implementation of significant Judicial reforms, including the vetting of corrupt judges considered obedient to the RPA regime. In 2018 the discussions on this topic revolved around the possibility of transitional justice which was referred to by several state officials including Nikol Pashinyan. However, the practical implications and implementation of such measures was in 2018 a source of disagreement and even opposition among civil society and My Step elite, in addition to the RPA opposition. Given the sensitivity of this topic in the Armenian context, it requires additional time for thorough discussions. However, given the overlap of the Rule of Law principles with the preferential fit of the My step government, political will for reform in this field appear to have increased in comparison with the previous government. However, the lack of expertise and of competent cadres requires the collaboration of technocratic members of the past administration, which according to some experts, limits the extent of the reforms. Therefore, civil society organisations have expressed in 2018 and 2019 their criticism due to the lack of significant progress of the Judicial reforms. The high expectations as a result of the nomination for Minister of Justice of Artak Zeynalyan, who had a long record as human rights lawyer, were replaced by social criticism in 2018, because the “judicial and law enforcement is the least changed ministry” (Andreasyan *et al.*, 2018: 50).

However, it is important that the clashes between RPA and My Step elite around key and very politicised cases, as the investigation and trials against the brutal repression of 2008 post-electoral protests, have implied certain divisions within the society and the Judiciary. Leaked recordings of My Step state officials indicate the “use of detention as a form to extort testimony” from former high-level officials, accused for state repression in 2008. Such developments have inspired civil society criticism for “ongoing, perhaps inertial arbitrariness in law enforcement entities with elements of human rights violations” (Andreasyan *et al.*, 2018: 52). Recently, the prioritisation of the judicial reform by My Step was reflected in the adoption of a new Justice reform strategy (2019 – 2024) at the end of 2019. This change has led to increased commitment of the EU towards Armenia in general and in the field of Judiciary more specifically (European Commission, 2019d). This Justice reform strategy includes specific provisions on the strategy of transitional justice to be developed, which includes the establishment of Fact-Finding in 2020. In addition, the strategy also includes specific aspects regarding a Constitutional amendment and the reform of the Judiciary (Government of Armenia, 2019). Given the initial stages of this reform and the inertial arbitrariness reported by domestic actors, it is impossible to reach any concluding findings. Therefore, the actual effectiveness and consequences of the renewed efforts for reform in the Judiciary are still to be analysed after the end of the public trials and the consequent implementation of the newly adopted Judicial reform strategy, including the transitional justice strategy.

### ***III. CONTEXTUAL FACTORS***

The decision-making processes in the field of Rule of Law in Armenia are defined by several contextual factors. Armenia is characterised by high ethnic homogeneity, with currently 94% of the population defined as Armenian Christians (UNDP, 2017). The secessionist conflict of Nagorno Karabakh from Azerbaijan between 1992 and 1994, led to the imposition of economically damaging trade and energy blockade by Turkey and Azerbaijan. However, in 1994 the Armenian state was in firm control of the territory (Stefes, 2006a; Way, 2009). This also led to the consolidation of a centralised state apparatus, in which the Nagorno-Karabakh conflict served as a unifying issue both at the elite and the national identity level. The origins of the democratic elite in the Nagorno-Karabakh liberation movement and the merge between Armenia’s national-building process, its democracy movement and the Karabakh movement facilitated the firm social and territorial control of the state (Rutland 1994; Way 2009).

The party system is defined by the personalist structures, which lack programmatic and ideological boundaries and depend on wealthy individual sponsors, rather than on the dues paid

by their affiliates (Dawisha and Parrott, 1997). Unlike Georgia and Moldova, the social cleavages in Armenia are defined by a strong nationalistic orientation of political parties that focused on the defence of the national interest, due to the overarching importance of the Nagorno-Karabakh issue. Connectedly, the military and economic dependence on Russia, has significantly reduced the weight of the geopolitical cleavage in structuring the party system.

Secondly, the institutional framework in Armenia strengthens the power concentration and personalist trends (Turovsky 2011; Hale 2015). The number effective parties in Armenia has significantly decreased from 5.19 in 2003 to 2.47 in 2017. This trend has been further reinforced by the coalition-making dynamics based on surplus-majority government composed of the 2 to 4 pro-government parties. After 2003 Armenia experienced its first transfer in 2018, ending a series of four consecutive governments of the Republican Party in a dominant-party system (three of which were surplus majority). There is a correspondence between Armenia’s presidential regime and its centralised party system.

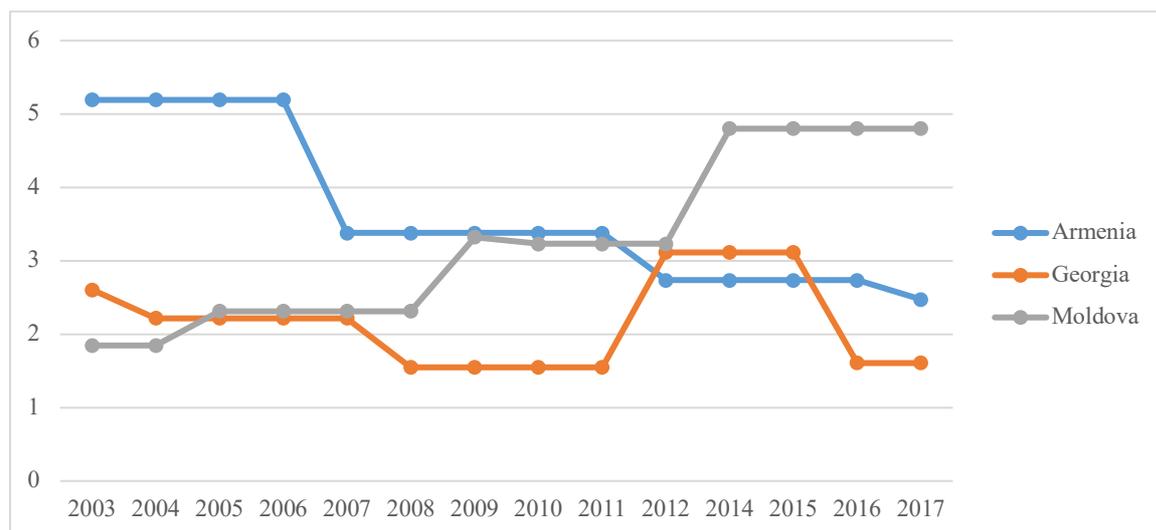


Figure 5. Effective number of parties Source: Author’s compilation based on electoral results reported by the OSCE and IFES (OSCE, 2000, 2003, 2007, 2008, 2012a, 2012b, 2013, 2017; IFES, 2007). The Effective Number of Parties has been calculated following Laakso and Taagepera formula (Laakso and Taagepera, 1979).

In contrary, the opposition is highly fragmented, due partially to the hindrances posed by the incumbent party-in-power, which is supported by the state apparatus and other private actors. The relative lack of consolidation of the party system in the three countries is illustrated by the values attributed to the Pederson index of volatility (see Table 1 below). During the period 1989 – 2009 Armenia has experienced more volatility in comparison to Georgia and Moldova. This trend indicates greater instability and uncertainty, due the possibility that “[t]he actors in power a decade from now may be completely different from those currently in power” (Powell & Tucker 2013: 131). This trend was confirmed in 2018 by the Velvet Revolution which led to almost complete renewal of the political elite represented in the Parliament. These

dynamics show that Armenia is defined by its dominant party system, and weak opposition which leads to high volatility caused by the entry of new parties.

Country	Volatility caused by the entry and exit of parties	Volatility caused by the change of votes between existing parties	Total Volatility (Pederson Index)
Armenia	50	6	56
Georgia	36	10	45
Moldova	36	10	46

Table 1. Electoral volatility 1989-2009. Source: (Powell & Tucker 2013: 131)

As regards informal networks, trade “accounts for most of the oligarchs’ income” (Antonyan 2016: 119) that “organized into several informal commodity-based cartels and semi-monopolies” in sectors as sugar, flour and alcoholic beverages (Kupatadze 2016: 12). Unlike Georgia, the oligarchic networks in Armenia lack financial-economic stability, which increases their dependence on their connections with the political institutions. Oligarchs manage to influence decision-making, depending on how close or distant their relations with the main political institutions are (Antonyan 2016; Hale 2015). In exchange, business elites provide support to political parties, as election rigging and opposition intimidation (Kupatadze 2016: 13). This cooperation illustrates an important level of collision and blurring boundaries between formal public and informal private institutions.

Since 1995 the centralisation of the institutional system found an expression in a powerful Presidency at the expense of weaker legislative and judicial branches. The President held important prerogatives towards the Judiciary, including the appointment and termination of the President and four out of nine members of the Constitutional Court, of the Court of Appeals and Prosecutors, including the Chief Prosecutor (Defeis, 1995). This power concentration in the Presidency and the subordinate role of the legislative and the judicial branches was harshly criticized by the opposition. The first Constitutional amendment in Armenia was initiated in 1998 and finalised in November 2005 by the second President Robert Kocharyan. As a consequence of this amendment Deputy Prosecutors would be appointed on the suggestion of the Prosecutor General (Venice Commission, 2005). Regarding the Judiciary, the Justice Council would be composed of 13 judges (9 elected by the General Assembly of Judges, 2 legal scholars appointed by the President, and 2 appointed by the Parliament) and it will be chaired by the Chairman of the Cassation Court. The Venice Commission noted that this composition “conforms to European standards” (Venice Commission, 2005: 6). However, the 2005 Constitutional reform did not clarify that career decisions should be made “upon the recommendation of the Council of Justice” (Venice Commission, 2005: 6).

In summary, the state and nation-building process in Armenia reflects the overarching socio-economic, geopolitical and ethnic issues. The perception of the Nagorno-Karabakh conflict as a national treat served as a unifying issue that contributed for consensus-building, stabilisation and concentration of power in the President (Colombier & Jaskiernia 2005; Khachatrian 2005). Against this highly centralised context, the institutional framework is also defined power concentration in the hands of the Presidents. For most of Armenian transition, the President remained in charge of key nominations in the Judiciary and the Prosecution, which implied lack of external independence of the Judiciary. Consequently, citizens' trust in these institutions was negatively affected for this reason.

On the other hand, the power centralisation, the lack of guarantees of free and fair elections, as well as the brutal repression of all post-electoral protests led to increased unconventional social participation in the period after 2008. Until today Armenia has not experienced an orderly transfer of power to the opposition as a result of elections, while the Republican party has remained in power since 1999 until 2018. In contrast to Georgia, where the first important post-electoral protests took place as the Orange Revolution and led to the resignation of Shevardnadze, in Armenia the protests were reportedly more numerous, but more brutally repressed by the centralised executive power, which allowed the continued control of the institutions by the Republican Party as a party in power.

Between 1999 and 2018, Armenian opposition did not achieve a successful revolution or political breakthrough, largely due to the strength and authoritarian tendencies of the state apparatus. Lucan Way underlines that the 2003 Georgian “protests were smaller than those in Armenia in 1996 and about the same size as anti-regime actions in Armenia in 2003 and 2004 and 2008” (Way 2009: 116). Unlike Georgia, in Armenia, “after the election day, the interaction between social actors and the state [...] reinforced the regime strength rather than magnify its vulnerabilities” (Bunce et al. 2010: 188). Armine Ishkanian argues that the electoral protests in 2003 and 2008 were a turning point in the evolution of Armenian civil society. After irregularities in the 2008 elections, protests led to clashed with the police and military units in Yerevan, leading to 8 deaths and more than 100 imprisoned. A state of emergency was declared during 10 days in which freedom of speech, assembly and association was abolished. These clashes have deeply influenced the protest movement in Armenia and some of the opposition leaders, including Nikol Pashinian, who was prosecuted and remained hiding until the government adopted an amnesty for all political prisoners for the 2008 protests. The amnesty was approved after large social protests in Yerevan in 2011 took place. In 2011 the government

also lifted the ban on rallies in Yerevan which has been seen as a modest improvement (Bertelsmann Stiftung, 2014).

The brutality of state violation of human rights, as well as of the freedom of speech, press and assembly led to a generalised sense of fear in the country. In spite of the lack of political consequences of the protests, the Armenian civil society organisation transformed their actions and the way the public viewed them. They managed to preserve “a space for civil participation and debate” by joining forces with independent media organisation (Ishkanian 2008: 42). The social protests in 2008 have inspired a “fairly intense political activism and civic engagement that first emerged during the initial stage of the post-election crisis” (Konrad Adenauer Stiftung 2013: 13). This led to increase in unconventional participation.

When considering the international background against which the reform process took place, it is important to reflect on the specific situation of Armenia in the EU-Russia shared neighbourhood. Armenia’s case and foreign policy differs essentially from the Georgia and Moldova, due to the high structural leverage of Russia which has been defined as “overdependence [that] emerged in a “3G” form”: guns, gas and goods (Giragosian, 2019: 5). Firstly, the Nagorno-Karabakh conflict between Armenia and Azerbaijan is the basis for the deep military dependence on Russia. Armenia receives Russian discounted weapons and hosts a Russian Military base in its territory. Armenia is the only Caucasus country member of the Collective Security Treaty Organisation (CSTO). Its leaders acknowledge that the CSTO is an “important factor for stability and security in our region” and of “strategic significance” for Armenia (ArmenPress.am, 2019). Therefore, Russia is a key security guarantor for Armenia.

In the field of energy and trade, the blockade imposed by Turkey and Azerbaijan conditioned the economic transition in Armenia. Its market remained relatively isolated, given that Georgia and Iran are the only neighbours that trade with it. Russia remains Armenia’s key energy supplier, which has allowed it to achieve gradual and almost complete dependence, in spite of not sharing a border with Armenia. For instance, Russia provides 80% of all gas consumed in Armenia at a comparatively low price of 150 Dollars per 1000 m<sup>3</sup> (Giragosian, 2019). In 2006 this price increased from 56 Dollars to 110 Dollars, which was criticised, but accepted by Armenia’s government (Tolstrup, 2009).

Russia uses this advantageous situation for increasing the control until it achieved the current monopoly of Armenia’s energy and transport infrastructure and key assets. Since 2002 Russia has pressured Armenia “to either hand over strategic assets or be forced to repay its US\$94 million debt and feel the consequences of rising gas prices” (Tolstrup, 2009: 934). The 2002 property-for debt agreement led to the monopoly of Russian companies of key economic

assets, as Armenia's atomic and hydroelectric power plants, its electric power grid (Falkowski, 2006). This trend has continued over the years and in 2013 Gazprom received a monopoly to operate Armenia's pipelines until 2043 (Kostanyan and Giragosian, 2017b). Furthermore, since the 2000s key economic sector in Armenia are part of Russian investment, as for instance the Armenal aluminium plant, Armavia and Armenian Airlines, Armersbank (Falkowski, 2006).

Thirdly, Armenia is largely dependent on trade with Russia and of the remittances sent by Armenians living and working there. It is member of the Commonwealth of Independent States (CIS) and after it rejected to sign the successfully negotiated AA/DCFTA with the EU in 2013, it became a member of the EEU. Interestingly, in 2018 the EEU represented 26% of Armenia's export, while EU amounted to 25%. It is important that the vast majority of the EEU exports are directed towards Russia (Giragosian, 2019). It has been calculated that its neighbours' trade blockade and isolation "lowers its economic growth by up to 30% of GDP" (Delcour and Wolczuk, 2015:498).

In addition, Armenia's dependence on migrant's remittances can be considered as high, given that for the period 2007 – 2012 they represented 16% of its GDP. 89% of these remittances originate in Russia. Consequently, Armenia is heavily dependent on trade and migration to Russia. Russia successfully uses these interdependencies as an instrument for influencing the foreign policy course of the country. For instance, Russia has used the gas prices in order to put pressure on Armenia to transfer part of the control of the Iranian pipeline to Russia (Falkowski, 2006).

Regarding the period studied here, before the adoption of the Judicial and Legal Reform Strategy in 2012, it is important to keep in mind that towards the end of the 2000s, Armenia experienced some of the negative effects of its high dependence on Russia, and on economic flows from remittances, service sector and construction industry (Delcour and Wolczuk, 2015). Such adversities reduced the legitimacy of the government and led to new initiatives for diversification and access to alternative economic and energy resources. Firstly, since mid-2000s Armenia increased its efforts to diversify its access to energy resources, though building a pipeline that would provide it with gas from Iran. Russia intervened in this initiative in order to retain its monopoly over the energy resources in the region. This strategy has achieved only marginal results, given that in 2018 only 5000 m<sup>3</sup> of gas were imported from Iran, in comparison to 2000 m<sup>3</sup> originating in Russia (Giragosian, 2019).

Secondly, as a consequence of the economic crisis, the 2008 war in Georgia and the EU sanctions imposed on Russia, the benefits from the close links between Armenia and Russia have decreased. For instance, the 2009 economic crisis led to 29% reduction in the total amount

of remittances (Ghazaryan and Tolosa., 2012). Similar trend was observed in trade, while the energy prices rose to 150 Dollars per m<sup>3</sup> after the economic difficulties experienced by Russia. As a consequence of the economic crisis and of social pressure the Armenian government increasingly focused on economic development and reforms, involving foreign policy diversification towards the recently launched Eastern Partnership (in addition to its relations with Iran and China) (Delcour and Wolczuk, 2015c; Makarychev, 2018b). The effects of the 2009 economic crisis led to a fall of 15.6% of Armenia's GDP. This development influenced the government's decision to pursue a modernisation reform path (Bertelsmann Stiftung, 2013).

Against this background of the 2009 economic crisis, social and political protests after 2008, the government recognised the need to continue the reform processes towards modernisation. In parallel, the recently initiated by the EU Eastern Partnership provided a convenient opportunity for developing the institutional and economic reforms. Given that before 2009 the EU did not even have a delegation in Yerevan, the inclusion of Armenia in the Eastern Partnership gave access to new immediate funding and training opportunities. In addition, it gave the possibility to negotiate the AA/DCFTA, which would provide a framework for modernisation of the Armenian economy, while opening the EU market to its products. It also gave the "prospect for a visa free regime and increased sectoral cooperation" (Delcour and Wolczuk, 2015: 499). The negotiations for the AA were launched in July 2010 and progressed at a very good speed in a way that in March 2013 all the "chapters have been provisionally closed" (European Commission, 2013b: 1).

In terms of social perception, it is important that in 2012 90% of Armenians perceived Russia as a friend and supporting country, 45% France and 19% - Georgia. Secondly, in 2014, 24,8% of respondents preferred the EU as a most desirable organisation for Armenia's membership, while 38,4% referred to the EEU. And when asked to choose between the EU and the CIS in 2009, 60% supported the CIS, while only 25% supported the EU. This tradition in public opinion in terms of foreign policy is another relevant difference between Armenia and Georgia and to the lesser extent Moldova. In addition, public opinion differentiates between the spheres of specialisation of the different international partners. For instance, in 2012 52% of respondents identified the EU as preferential partner in Human Rights, and 47% in the field of Science, which are perceived to be the main spheres of EU competitive advantage.

Russia, on the other side, is identified as a possible partner in Human rights by 25% for respondents and 28% in the field of Science. Furthermore, Russia seems to have a competitive advantage in Industry (50%), the Karabakh issue (64%) and External security (72%). On the

contrary, the EU was not perceived as such a competitive actor in these fields, as only 24% considered it as a preferential partner in industry, 14% in the Karabakh issue and 10% in external security (Kakachia and Markarov, 2016). In conclusion, social perception in Armenia is more open towards cooperation with Russia and other post-Soviet organisations, while recognising the comparative advantage of the EU in the field of Human Rights and Science. Against this background of domestic power centralisation in the Republican Party, foreign policy isolation accompanied by efforts for diversification and social protests, began the reform processes to be considered in the field of Rule of Law.

#### ***IV. PARTICIPATION AND COMPETITION***

The development of the Strategy for Legal and Judicial Reform for the period 2012 – 2016 took place with the support of the EaP, which conditions its inclusive character. The Strategic framework was developed with the participation of “all relevant actors: Ministry of Justice, Judiciary, Prosecution, Police, Advocates, civil society and donors”, (European Commission, 2017a: 2). In spite of counting with such an inclusive process for the Reform Strategy, it is essential that the legal reform process in Armenia is highly centralized and presents challenges which affect the norm development and implementation at a later stage after the strategy is adopted. For instance, the OSCE/ODIHR concluded that some of the main weaknesses of the legislative process in Armenia are the “highly formalized legislative process” with “Insufficient policy making at the initial stage”, which leads to a “high frequency of amendments of the legislation” (OSCE/ODIHR, 2015: 6-9). Furthermore, the domestic legislative process is dominated by the government which does not provide for “sufficient stakeholder consultation [...] at the policy formation stage” (OSCE/ODIHR, 2015: 6-9).

In addition, at the parliamentary phase of discussion and approval of the legal norms there is a “lack of agreement between government and opposition parties over the preparation of laws”, a “lack of dialogue given the strong position of the government in the Parliament” and “lack of engagement with civil society” (OSCE/ODIHR, 2015: 6-9). These features of the legislative process in Armenia, lead of the adoption of norms that lack discussion and consensus at the domestic level. These aspects contradict and undermine the participative and consensual process of definition of the Strategy of reform assisted by the EU. Consequently, one of the deficiencies of the EU assistance is the introduction of formal and superficial procedures at the initial policy-making stages, which lack continuity throughout the reform process. In addition, it has been underscored by domestic and international actors that the involvement of civil society in the reform processes are much more limited compared to

Georgia and Moldova. Civil society organisations tend to organise events for discussion of the reform processes to which they invite domestic and international actors with the aim to advocate for specific changes. However, as indicated above the legislative process does not allow for active social involvement in the policy-making (Interview 45).

This trend is confirmed by the affiliation network built on the basis of the members of the Committee entitled to implement the Strategy for Judicial and Legal reform (2012 - 2016). As Figure 6 below shows the affiliation background of the actors involved in the Commission is predominantly executive and legislative. Interestingly, the most represented institutions in the network (linked to three members of the network) are the Prosecution and the Parliament. It is important that the over-representation of members with background in the Prosecution service is a trend observed in other Commissions as well. This is relevant as in the case of Armenia, the Prosecution is linked to values as hierarchical obedience and political influence of the executive. It is followed by institutions (linked to two individuals), as the Ministry of Justice, Constitutional Court, Council of Ministers and Prime Minister, the Presidency, the Russian-Armenian University and importantly the German Development Agency GIZ. This trend of inclusion of experts that have been contractually linked to the GIZ, is also observed in the 2015 Constitutional Commission studied in Chapter VII.

There is a considerable overlap between the 2015 Constitutional Commission (reflected in Chapter VII) and the Commission of Figure 6 below. Three out of 7 members of the Commission for Judicial and Legal Reform are also members of the 2015 Constitutional. Such affiliation networks are a very relevant proof and illustration of the closed feature of the legislative process in Armenia that was reported by domestic and international actors. The limited opportunities for participation for actors beyond the legislative, the governing elite and a few well-established figures in the Judiciary increased the frustration among those social groups that did not have access to the policy-making, which culminated in the 2018 Revolution.

Furthermore, the affiliation network in Figure 6 (like the 2015 Constitutional Commission) is relatively smaller compared to Georgia's affiliation networks built on the basis of its Commissions. This comparison illustrates to what degree the political elite in Armenia did not seek greater inclusiveness and legitimation of the reform process. On the contrary, the implementation of the comprehensive and inclusive strategy on Judicial and Legal reform promoted by the EU, was defined by a much more closed trends of participation. The limited presence of civil society organisations is illustrative of this dynamic. It is interesting, that political actors are the leading ones in this reform process at the expense of the Judiciary. Thus trends show a closed political process with low societal accountability.

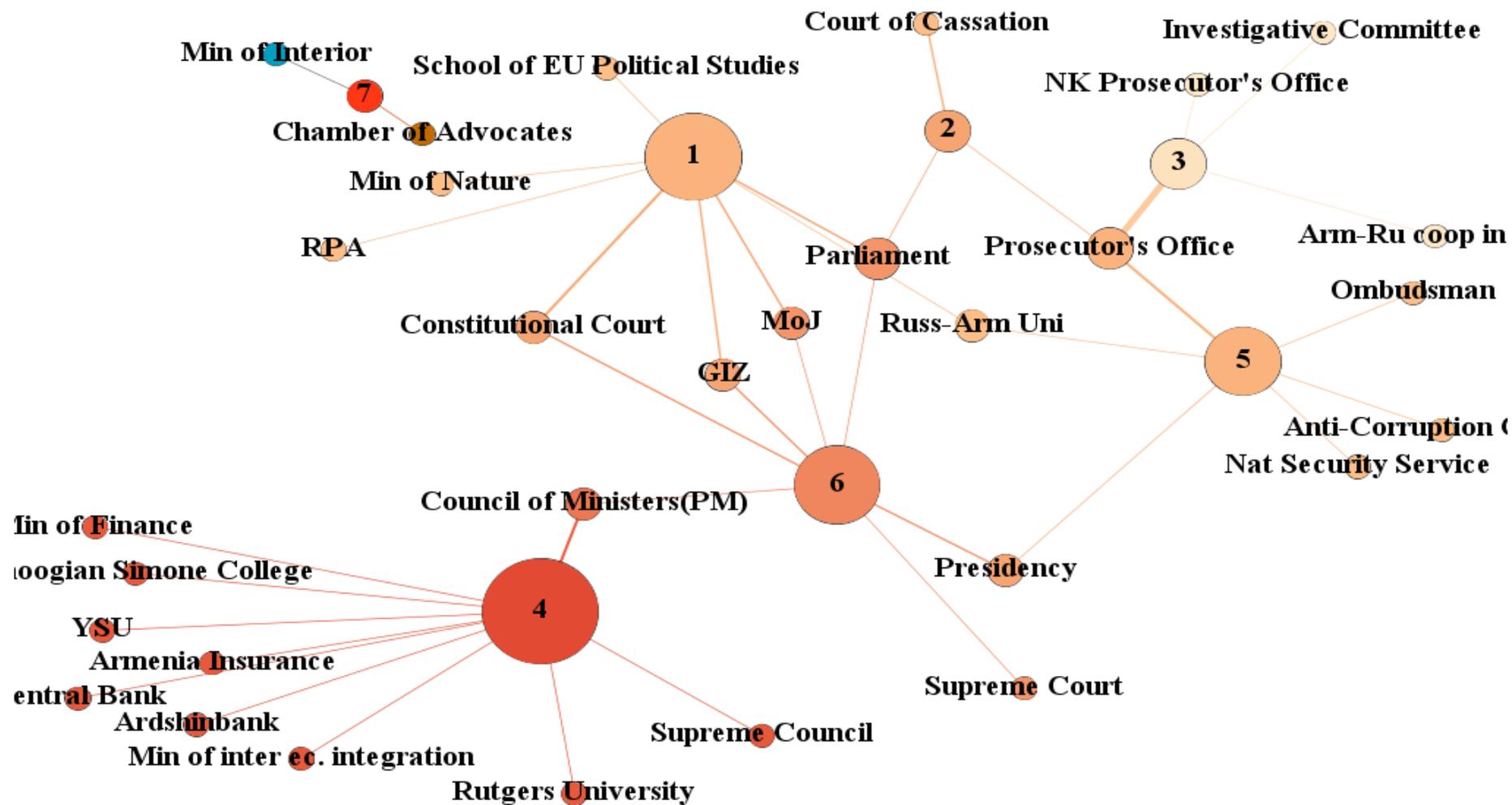


Figure 6 Affiliation network of the Committee entitled to implement the Strategy for Judicial and Legal reform Armenia (2012 – 2016)

Furthermore, it is important to mention an interesting dynamic of domestic competition and participation observed in the way the Judicial reform was implemented. Specifically, the Ombudsman presented a relevant in-depth study of the sources of violation of the Judicial external and internal independence. This study was based on interviews with 120 legal professionals, experts and the study of “all the decisions taken by the COJ during the period 2006-2013, 270 cassation complaints that were taken into proceeding by the Court of Cassation (2012-2013), 500 applications on sentencing judges to disciplinary liability (2011-2013), 200 cassation complaints and the decisions of the Court of Cassation in regards to them (2012-2013), over 35 judicial cases provided by lawyers” (GRECO, 2015: 42). This study was domestically and internationally recognized due to its mapping and illustration of the way in which Judicial independence is challenged. Therefore, it had significant potential for significantly contributing to addressing the lack of Judicial independence. However, the Council of the Association of Judges and public authorities harshly criticized its findings and did not take it into account for the reform of the Judiciary and the Prosecution. In addition, rumours explained that this report was the reason behind his early resignation in 2016. Even if these rumours are not confirmed, the conclusion of the Ombudsman study did not contribute to effectively reforming the Judiciary, in spite of its valuable insights that were acknowledged by both domestic and international actors.

In relation to the evolution of the trends of domestic participation, it is important that the 2010s witnessed the emergence of citizens’ grassroots urban-based movements, organised around shared collective concerns on local level as the protection of historical or environmental landmarks. These movements are “informal, volunteer based, horizontally structured, [...] loosely organised” and participatory and count more on street-based demonstrations and creative actions, rather than on clearly structured social participation (Ishkanian 2014: 157). They are usually funded by individual contributions and their leaders do not trust political parties and internationally-funded NGOs, due to their lack of consideration of the grassroots concerns (Ishkanian, 2014b). Until 2018 these initiatives were usually fragmented and temporary in nature. When they achieved their local goal, they would lose the reason to continue their existence as long-term social movements (Ishkanian, 2014b). The relevant governmental actors have addressed the demands of these protests, bringing to an end the social discontent and taking advantage of the situation to strengthen their image as defenders of civil society’s causes. Such initiatives express citizens’ dissatisfaction with the corruption, inequalities and oligarchic groups that limit the rule of law in the region (Ishkanian, 2014b).

Between 2009 and 2018 these social movements emerged and increasingly gained power based on their capacity to influence local policy-making, due to their capacity to mobilise and inspire citizens to protest. Such movements would be the Mashtots Park Movement in 2012, the 100 drams movement against rise of public transport prices and the Dem Em (I am against) movement in 2013, the ‘Let’s Preserve the Afrikyan Club Building’ initiative and the Electric Yerevan in 2015. In all these cases the government reversed its decisions, rendering successful the social movement. At the short term this led to the demobilisation in the short-term local social movement, but in the long-term a constant increase in citizens’ support towards unconventional participation has been observed. For instance, public polls have reflected the rise in citizens’ support of nonconventional participation in the early 2000s, which has increased from 59% in 2008 to 72% in 2015 and then decreased to 69% in 2017 (Caucasus Research Resource Center, 2018a).

Eventually, this social activism provided the basis for the successful Velvet Revolution in 2018. This is illustrated by the continuity in the ‘Velvet Revolution’ which adopted some of the slogans of these social movements as “We are the owners of our country” and by the continuity of civil society leaders in the protest movement and consequently as members of the new governing party “My Step” led by Nikol Pashinian (Proposition 7.) (Ishkanian, 2018). According to former social activists, the local success was based on their capacity to gather enough people in a protest movement in order to force the government to negotiate with them and to compromise. In this sense, between 2008 and 2018 “the opposition became traders of social capital” as they were not able to run on free and fair elections and non-transparent deals dominated the parliament (Interview 52). If protests would gather 30 000 people than the government would compromise, but under the condition that if the protester do not accept the negotiations, then “we would return to the 01 of March” 2008 (Interview 52). This illustrates the degree to which the state repression of the 2008 protests have remained as a powerful event in the social imaginary. The 2008 violation of political rights inspired these unconventional movement, which eventually materialised in the 2018 Revolution.

## ***V. INTERNATIONAL FACTORS***

The Eastern Partnership policy was the framework for cooperation between the EU and Armenia, that provided the context for the reform process analysed here. As mentioned above it gave access to AA/DCFTA and to strategic EU funding. However, the lack of application of initial conditionality affected negatively the image of the EU in Armenia and was criticised by domestic actors. This is relevant as the EaP was launched one year after the 2008 post-electoral

protests were brutally suppressed. Therefore, the credibility of the EU conditionality was reduced by the lack of principled position towards signs of democratic backsliding manifested in the suppression of citizens' rights against the opposition after the 2008 elections.

The negotiations for the AA were launched in July 2010 and progressed at a very good speed in a way that in March 2013 all the "chapters have been provisionally closed" (European Commission, 2013b: 1). In addition, after Moldova complied with all the pre-conditions, the DCFTA negotiations were launched in February 2012 and progressed rapidly. Consequently, the AA was intended to be signed in 2013, and the DCFTA in 2014. Furthermore the Visa Facilitation Agreement was signed in December 2012 (European Commission, 2013b). These negotiations represent on their own important incentives for the advancement of the reforms defined by the EU as part of the AA/DCFTA.

In addition to these incentives, the EU provided broad training and funding opportunities as a mechanism for advancing the reforms. For instance, in 2011 the EU funds provided to Armenia amounted to 19.1 million Euros covering a Comprehensive Institution Programme and a set of Technical assistance programme as Twinning and TAIEX, with the following distribution: 60-70% of the amount is earmarked for the preparation for DCFTA, 20-25% for the field of Justice, Liberty and Security, while 15% for the institutional building of the AA negotiations (European Commission, 2013b). In the same year 2011, the EU provided additional 24 million Euros as Budget Support (22 million Euros) and technical assistance. The thematic focus of the Budget Support covers aspects as Public Finance Management, public sector transparency and regulatory convergence with the EU in areas of trade, customs and sanitary matters (European Commission, 2013e). In 2012 additional 25 million Euros were provided as Budget Support focusing on topics related with the DCFTA as intellectual property, trade barriers and sanitary measures, in addition to 15 million Euros for projects in the same or similar fields (including migration).

However, both domestic and international observers more or less critically noted that the political pre-conditions involved for the provision of these incentives under the framework of the EaP were limited and did not imply significant change for citizens' rights or the power centralisation and violations perpetrated by the government. Such pre-conditions did not appear to be an essential part of the political aspect of the negotiation of the AA or the Budget Support provision at least at the initial stages of the EaP implementation. Therefore, Armenia was given access to the EaP and to all these incentives one year after the military suppressed the post-electoral protests. From this perspective, "the EU accepted the non-democratic political status quo after the 2008 crisis as given without making explicit political changes a precondition for

closer ties”, reducing the credibility of any political conditionality for the support and delegitimising a potential normative support for democracy in the future (Delcour and Wolczuk, 2015: 501). Normative and economic support in the framework of the EaP offered the advantages of modernisation and access to the EU market, without leading to any political costs for the domestic elites and their control on power.

This approach guaranteed EU’s access to domestic processes that would potentially increase its leverage in the future, but compromised its value-based position in the eyes of civil society actors that demanded such critical position towards the democratic backsliding of the country. Civil society assessed negatively the “little critical attention from the EU, which preferred to distance itself and take a wait and see approach” (Babayan, 2011: 3). The pressure exerted by the EU had limited success on the way the 2008 post-electoral crisis was managed. For instance, the state of emergency continued as long as it was initially planned, an amnesty in 2009 freed only 30 of the prisoners and no investigation was launched until 2010 when social protests re-emerged (Babayan, 2011: 3). Therefore, the political developments in the country influenced only marginally the governments’ democratic backsliding, while access to some of the main incentives as the AA/DCFTA and Visa Free regime negotiations was provided.

Interestingly, in 2012 the EU provided also budget support for Justice reforms in Armenia of 20 million Euros, which is a continuation of the Budget Support Programme (BSP) (18 million Euros) provided to Armenia in 2009. The 2012 BSP aims to support the implementation of the Strategy for Legal and Judicial Reform for the period 2012 – 2016 and more specifically in the fields of anticorruption measures in the Judiciary, provision of efficient and accessible justice, revision of the Criminal Code and better quality of the services (European Commission, 2019a). In the 2012 BSP it is underscored that based on the past experience, BSP as an instrument “is functioning well in Armenia, helping to advance the reforms as demonstrated by high compliance with conditions set for disbursements” (European Commission, 2012c). This EU support mobilise both the leverage and linkage mechanisms as they provide the different socialisation opportunities mainly of state officials.

Therefore, the EU support in the field of Judiciary in Armenia represented approximately one fifth of the total funding agreed in the period 2011 – 2012 (20 million out of 105 million Euros approximately). No additional funding for the field of Justice reform was provided until 2017, apart from a Human Rights BSP in 2014. The development and implementation of the Strategy for Legal and Judicial Reform for the period 2012 – 2016 took place in the framework of the 2012 Budget Support Programme. The development of an inclusive and comprehensive

reform strategy was part of this process, which underlines the central role played by the EU in the beginning of this reform process (European Commission, 2017a).

However, as showed above, such inclusive and open dynamic was not followed throughout the norm development and implementation process beyond the adoption of the Strategy in 2012. Instead this process remained dominated by the executive and closed for civil society actors, even for the Ombudsman. These aspects contradict and undermine the participative and consensual process of definition of the Strategy of reform assisted by the EU. Therefore, one of the deficiencies of the EU assistance is the introduction of formal procedures that emphasize the inclusivity and comprehensiveness of the measures at the initial policy-making stages. However, these aspects lack continuity throughout the reform process, that is implemented as usual, which on the other hand limits the reform outcomes and their legitimacy.

Apart from this support, institutions as GRECO and the Venice Commission provided expert opinions and monitoring of the reform processes. For instance, they concluded that “unfair use of disciplinary proceedings against judges as means of pressure aimed at influencing their decisions or retaliating against them” (GRECO, 2015: 42). As a consequence, individual judges have adopted the practice to “consult with other judges prior to making their judgements [...] out of fear that the judgement will be reversed and the judge subject to disciplining for illegal ruling” (GRECO, 2015: 42). However, the procedure for dismissal and selection of the Prosecutor General was satisfactory for international observers, but was criticised by domestic actors, because it *de facto* guarantees the capacity of the Republican party to control this institutions without involving the opposition in this decision. In this case, international actors have shown to consider mainly institutional factors, while ignoring the competition dynamics and their influence on the outcome of the reform.

In relation with the assessment of the EU regarding the outcomes of the judicial reforms, the 2015 monitoring report acknowledged the that the 2014 amendments “strengthened the independence of judges by defining the duties of the self-governing structures, improved the criteria for evaluating and promoting judges and made the procedure for appointing them more transparent. However, the amendments formally “endorsed the role of the President in the final appointment of judges” (European Commission, 2015b). The reason for this limited criticism towards the lack of effective advancement of the reform processes might be also due to the explanation that the reforms would be further developed by the 2015 Constitutional reform.

At this point it is important to mention that Armenia is country in which the least funds (20 million Euros in 2011 and 2012) have been invested in comparison to the two other cases studied here. For instance, in the period 2012- 2013 Georgia received 67 million Euros of BSP,

which in 2015 was complemented by additional 50 million Euros of BSP. In the case of Moldova, judicial reforms were supported with 72 million Euros in the period 2011-2012. In Armenia the amount provided in 2011-2012 reaches just 20 million Euros, while the amount provided between 2014 Human Rights Programme and the 2017 Justice funding amounts a total of 16.2 million Euros (European Commission, 2019a). In addition, it is interesting that Armenia Budget Support for Justice in the period 2011 – 2012 was proportionally smaller than the Budget Support for other sectors as DCFTA negotiations etc. This relationship would be the reverse in the case of Georgia and Moldova, where proportionally much more emphasise was put on the Judiciary and governance in terms of Budget financial support (Eastern Partnership: Civil Society Forum, 2014) .

The EU approach towards Armenia is unique in the Eastern Partnership, given that in 2013 Armenia abandoned the AA/DCFTA negotiation in order to become an EEU member, which led to certain flexibility and adaptation by the EU. This U-turn put an end to the expectations to combine Russia’s “security umbrella with an adherence to the EU’s economic model” (Dragneva et al. 2017: 13). However, after this the President of Armenia on repeated occasions insisted on continuing the close dialogue and negotiations with the EU, which gave place to a new contractual framework. As on this occasion a DCFTA was not possible an interesting discursive shift took place among Armenian political elite. If before 2013 the economic modernisation and trade aspect were the main focus for the ongoing negotiations and reform-adoption, after the U-turn the European model as “Armenian nationhood” conscious and irreversible choice became central. For this purpose,

*Armenia is determined to continue with the implementation of the deep and large-scale reforms aimed at fighting corruption, ensuring free economic competition, raising transparency of government activities, safeguarding the independence of judiciary, guaranteeing freedom of speech, and strengthening the civil society, which constitute the pivot of Armenia-EU relationship (President of the Republic of Armenia, 2013).*

Furthermore, Sargsyan insisted that the EaP “provides with an opportunity to build a qualitatively new, closer and expanded relationship upon the basis of shared European values. Developing such a relationship stems from Armenia’s and Armenian people’s spiritual-cultural and historical-political heritage, and it is the conscious demand of our society” (President of the Republic of Armenia, 2013). As this speech illustrates the approximation to the EU in this case is much framed more in terms of constructivist linkage model, in which European values are presented as a civilizational choice, which continues to inspire state and nation-building in

Armenia. The commitment with reforms in the field of Rule of Law and democracy are discursively reinforced by the states' leadership. Furthermore, Armenia insisted on achieving a format which "would be compatible with other formats of cooperation" (President of the Republic of Armenia, 2013). As a consequence of this process a specific agreement adapted to the needs of Armenia was negotiated between 2015 and 2017.

In 2017 the EU and Armenia signed a Comprehensive and Enhanced Partnership Agreement (CEPA), which adapts the AA framework and significantly reduces the trade-related part. CEPA is a significant precedent of a contractual framework compatible with both the EU and EEU. It is limited to the intention to "intensify dialogue and cooperation in the area of foreign and security policy" (European Union & Republic of Armenia 2017: Art. 5). This development proves the intentions of the EU to engage in a non-exclusive way with its neighbours and to provide more tailor-made options for cooperation (Dragneva, Delcour and Jonavicius, 2017; Devyatkov, 2018). The democracy and rule of law conditionality clause is maintained in Art. 379 of CEPA as an essential principle. As the AA, CEPA establishes terms for the cooperation for developing "democratic institutions and the rule of law" and "judicial and legal reforms" (European Union & Republic of Armenia 2017).

The financial assistance to Armenia continued the same trend of reduced amounts in comparison to the other cases in this study. For instance, according to the financial planning for the period 2014 - 2017 both Georgia and Moldova were expected to receive between 335 and 410 million Euros, while Armenia was expected to receive between 140 and 170 million Euros (Eastern Partnership: Civil Society Forum, 2014). This budgetary distribution illustrates the EU approach 'more-for-more', according to which incentives are increased for advancing the reform processes. While incentives are reduced to half for non-associated countries.

This proportion is even more notorious in the funding for Rule of Law reforms. For instance, in 2014 Armenia received a Budget Support Programme (BSP) of only 12 million Euros for the reform processes in Human Rights, which focused on the adoption of legislation on free and fair elections, torture prevention and anti-discrimination, and enhanced coordination in the field of Human rights. This BSP does not therefore address specifically the field of Judiciary, Prosecution or anticorruption. In 2017 the EU provided the last funding package for the Judiciary reform of only 4 million Euros to be managed through expert and project provision. This programme aimed to support the reform process through a technical assistance in the preparation of evidence-based reform programme. A second technical support programme is expected to "increase the independence, predictability and efficiency of justice [...through...] the implementation of organizational and procedural improvements within the

judiciary as well as designing and upgrading necessary e-justice solutions” (European Commission, 2017a: 11). When compared to the 50 million BSP provided to Georgia, this programme clearly illustrates the decreasing incentives for this reform in Armenia. However, it is interesting that apart from focusing mainly on economic development, the EU in Armenia adopted a different approach from Moldova, where strict conditionality was applied.

As described above the previous BSP were considered as effective, but the 2017 BSP pointed among the lessons learnt that “the adoption of legislation is not followed by effective implementation, there is lack of commitment to reforms” and lack of political will (European Commission, 2017a: 9). This analysis of the difficulties in the implementation of the Judicial reform is very similar to the ones detected in Moldova. However, Armenia is not an associate state and the EU did not engage in a very strong critical position against domestic political processes. Therefore, conditionality of the first Justice BSP in Armenia was not credible and it was of reduced size in comparison to other EaP countries. In addition, the credibility of the EU conditionality was reduced by the lack of principled position towards signs of democratic backsliding manifested in the opposition oppression after the 2008 elections. Therefore, it is possible to conclude that the EU conditionality and socialisation capacity was undermined since the beginning of the EaP, due to its lack of adoption of critical position towards signs of democratic backsliding. In addition, the size of the incentives provided for Armenia was more limited when compared to the BSP for judiciary reform provided to Georgia and Moldova.

Lastly, it is important that after the adoption of CEPA, the programme documents reflect a more critical assessment of the reform processes in Armenia. For instance, the programme provided in 2017 for 4 million Euros clearly stated the following lessons learnt:

- *The adoption of necessary legislation is not followed by effective implementation; there is a lack of commitment to reforms [...]*
- *The necessary solutions tend to be adopted without proper policy and financial analysis and evidence, thus some reforms and solutions are not sustainable in the long run;*
- *There is no broader agreement over the necessary steps for deeper reform, which raises concerns over lack of political will [...]* (European Commission, 2017b).

Importantly, this more critical position of the EU after the adoption of the CEPA, matches with the stricter conditionality adopted by the EU in Moldova after the 2015 Bank theft and the adoption of the AA/DCFTA (discussed below). Therefore, it is possible to conclude that EU conditionality has been certainly reinforced after the enforcement of new contractual

framework in Armenia. The effectiveness of this instrument is still to be confirmed after the Judicial reform, defined by the government of My Step.

In parallel to the adoption of the Justice Reform Strategy and the 2014 amendment of the Judicial code, the international dynamics reversed their direction, leading to what international analysts defined as the U-turn of Armenia. The AA/DCFTA negotiations between the EU and Armenia progressed rapidly, to the level that its signature was already planned to take place in November 2013. In addition, the declarations of Armenia's Prime Minister at the end of 2012 - beginning of 2013 illustrate clearly the intention to integrate with the EU market. When interviewed by the Russian newspaper "Izvestia" in November 2012, the Prime Minister stated that "our priority today is the agreement of the comprehensive free trade agreement. We want to sign it in 2013" (Radio Azatutyun, 2012). The main reason for not becoming member of the Russia-led Customs Union was the lack of common border with any of its members (Radio Azatutyun, 2012). In addition, in February 2013 when interviewed by another Russian newspaper, he emphasized also the nature of the Union as a reason. Sargsyan stressed that "the structure of the Armenian economy is very different from that of the Customs Union's countries that [...] pursue a policy of supporting domestic manufacturers through quite high customs duties [...] on the whole, the level of such duties in the Customs Union is twice higher than those levied in Armenia [.and...] entering the Customs Union would be "very complicated, if not impossible" (Radio Azatutyun, 2013a).

However, this decision was completely reversed in September 2013 after a meeting between the Serzh Sargsyan and Putin in Moscow, following an invitation from Russia. A common statement was issued as a result of this meeting outlining the main issues discussed, including the positive dynamics in political, economic, cultural-humanitarian, military and military-political fields" (President of the Russian Federation and President of the Republic of Armenia, 2013). The two presidents also confirmed their intention to develop bilateral projects for the modernisation and diversification of Armenia's economy, including common energy, transport and infrastructure projects. In addition, the statement indicated the willingness of Armenia to become part of the Customs Union and of the process of Eurasian Integration. As an explanation for this decision, Sargsyan stated:

*"that, since we share a system of military security, it is impossible and inefficient to isolate ourselves from the corresponding geo-economical space. [...] This is a rational decision; it is a decision based on Armenia's national interests. This decision is not a rejection of our dialogue with European institutions."* (Peter, 2013).

From a foreign policy perspective these statements clearly illustrate the way in which the leverage of the competing regional alternatives, the EU and EEU, have conditioned the geopolitical decisions of a small country as Armenia. The lack of clear opposition of Russia before 2013, allowed Armenia's government to pursue AA/DCFTA negotiations, due to its advantageous conditions. However, the consideration of the military and geopolitical leverage of Russia led to a rational decision on the need to pursue the EEU foreign policy direction. In this sense, it is surprising how the EEU was linked to security questions, given that it has a merely economic and not military character. It also shows how the centralised institutional system allowed the President to take this decision during the visit to Moscow.

This logic of argumentation used by Sargsyan shows the existing links between different leverages in the region. Furthermore, security incentives were reinforced by the announcement that "Russia agreed to deliver arms to Azerbaijan worth 4 billion Dollars" in 2013, which increased the vulnerability of Armenia (Makarychev, 2018: 11). These weapons' sales were revealed in 2016, which affected negatively the asymmetric military relationship between Russia and Armenia. Russian officials claimed that Armenia as a strategic partner of Russia received better weapons and at a discounted price (RFE/RL's Armenian Service, 2019). Against this background, Russia's image as a security provider in the face of possible military aggression of Azerbaijan has suffered (Giragosian, 2019). However, the lack of any alternative for Armenia in this field, predefines its foreign policy choices.

In addition, it is important that the backlash with which some of these decisions were met in Armenia, led to certain adaptation and flexibility on the side of Russia and the EEU. In order to soften the difficulties of Armenia's integration in the EEU, a transition period included an exemption from the higher EEU tariffs on 800 Armenian goods was agreed until 2020 (Giragosian, 2013). Short-term street protests took place in Yerevan after Sargsyan announced the decision on Armenia's EEU membership. Similar situation took place in 2016, when the Electric Yerevan protests against the rise in electricity price took place. As a response to these mobilisations Russian companies sold part of their assets to the "Armenian-Russian businessmen, who runs the Tashir group" and to other companies as the Contour group (Kostanyan and Giragosian, 2017: 13). In spite of this, Russian companies still control large portions of Armenian transport and communication sectors (Giragosian, 2019). The use of the gas price as a leverage instrument, was also used after the 2018 Velvet Revolution, when it was slightly increased from 150 to 165 Dollars (Giragosian, 2019).

Regarding the reform of the Judicial system and the discussions of transitional justice that were raised after the Velvet Revolution, it is important that Russia's leadership has shown

interest in this topic, which led to official statements and meetings. The clearest such examples were the prosecution and the trials of figures close to Russia's political elite, as the former President Kocharyan and the CSTO General Secretary Yuri Khachaturyan for their role in the suppression of the 01 March 2008 protests. The Foreign Minister Sergey Lavrov expressed concerns that "these actions contrast with the statements that [Armenia's government] will not persecute their political opponents" (Vesti.ru, 2018). In 2019 a Duma Deputy Zatulin stated that the trial against Kocharyan is "shameful for Armenia" (168hours, 2019b). Similar tensions took place in the CSTO with direct confrontation between the Belarusian President Lukashenko and Pashinyan. Konstantin Zatulin, the deputy President of the Duma State Committee for CIS Questions and Relations with the Compatriots, stated that Pashinyan has "destroyed his image of being a balanced, responsible and unbiased politician", because he "pretentiously ignores the opinion of the Artsakh fight comrades of Kocharyan" (Aravot.ru, 2019). In addition, he also pointed that "Robert Kocharyan is among the closest friends of Vladimir Putin". Also Russia's positive relations with Kocharyan are "based on the assessment of everything that he has done for the development of the Armenian-Russian relations" (Aravot.ru, 2019).

In response to this pressure Pashinyan replied that these trials and investigations refer to a democratic issue of violation of Armenian law. However, this dynamic illustrates to what degree the relations between Russia and Armenia are influenced by personal trust between the leaders. The judicial and prosecution processes against the former leadership of Armenia were expressly opposed by Russia's high-level officials, due to the close relations with former RPA leaders. Given this background, the measures for transitional justice included in the Justice and legal reform strategy for the period 2019 – 2024 will probably renew these controversial relations. It is interesting that Russia's ambassador in Yerevan met with the recently appointed Minister of Justice in July 2019 in order to discuss the ongoing reform process in the Judiciary. The ambassador pointed that the "Ministry of Justice currently is a very important body in the governmental state system" and that Russia "refers very carefully and with respect to the processes taking place in Armenia" (Embassy of the Russian Federation to the Republic of Armenia, 2019; Hetq.am, 2019).

These developments are important, because they shed light on the question raised in chapter III, does Russia promote authoritarian government as such or its goal is to influence the geopolitical choices in the region. The Armenian experience in the field of Rule of Law shows that Russia accepted the regime transition after the 2018 Velvet Revolution, given that the new leadership of Armenia provided guarantees that it did not imply any geopolitical changes. On the other hand, when the Judicial and Prosecution processes against the leadership of the RPA

that is closely linked to Russia's governing elite, the opposition was clear. As a response the My Step leadership frames this process as internal democratic developments. The implementation of the transitional justice strategy in the framework of the Judicial and Legal reform strategy, adopted in 2019 will provide clearer conclusions in this aspect. At this point, however, Russian leadership has intervened based on the trust relationships developed with the previous government, while gradually building trust with My Step government.

## ***VI. CONCLUSIONS. IMPLICATIONS FOR FREEDOM AND EQUALITY***

The lack of political will of the RPA led to the adoption of formal aspects of the Rule of Law reforms, which still give space for political influence on the Judiciary from the executive or legislative, in addition to the lack of impartiality of individual judges. Therefore, the lack of both internal and external independence of the Judiciary remain the main weaknesses of the system. The 2014 reform of the Judicial Code introduced certain improvements as a clarified institutional framework, but its basic features did not introduce guarantees against external and internal interference, including appropriate disciplinary proceedings. The positions of the Court of Cassation, the Council of Court Chairs and the Council of Justice allow interference and control of the decisions of individual judges. Therefore, key aspects of institutional and professional accountability are used as instruments to condition and influence the judicial hierarchy. This situation was to certain degree remedied by the 2015 Constitutional reform, as the central role of the CCC was reduced, and certain limitations on transfers individual judges.

The external independence of the Judiciary is negatively affected by the role of executive figures (as the President or Prime Minister) or the legislative in key nominations and dismissals, including the Prosecutor General and the nomination of judges. In addition, the capacity of the Minister of Justice to initiate disciplinary proceedings directly interferes with the independence of the Judiciary. This role of elected institutions in key Judicial functions, indicates that the model chosen by the Armenian government follows the French or neo-Latin type described in the first part of this Chapter. The political responsibility in this case is considered as a key instrument for guaranteeing effectiveness of the institutions. In addition, the introduction by the 2015 Constitutional reform of the HCJ, as an institution entitled to mediate and limit the interference, confirms this dynamic. In summary, the lack of political will of the RPA led to the adoption of formal aspects of the Rule of Law reforms, which still give space for political influence on the Judiciary from the executive or legislative, in addition to the lack of impartiality of individual judges.

However, it is important that the weaknesses of domestic competition in Armenia, do not allow for actual societal accountability of the Judicial institutions, which would usually be required in order to guarantee the effective functioning under the neo-Latin model. These lack of societal accountability affects negatively citizens' freedom and equality. The politicisation of the Judiciary and Prosecution allows the control of these institutions by the incumbent party and or elite, which consequently limits the equal access to opposition societal groups. Therefore, Armenian Judiciary and Prosecution are influenced by a substantial concentration of power, which in the last two years has moved from the hands of the President towards the Parliamentary majority. Given the trend of sur-plus majorities in the Parliament and concentration of power in one party, the opposition still lacks capacity to influence the policy-making processes. The lack of influence of an effective competition in the Armenian Parliament leads to concentration of power and unlimited control of independent and impartial institutions as the Judiciary by groups linked to the government. This conclusion is even more relevant if the period before 2018 is considered, when electoral fraud allowed the institutional monopoly by the RPA (see chapter IX).

Furthermore, such institutional control of both representative and Rule of Law institutions by one social and political faction, allows their instrumental use for political goals. Such dynamics potentially reinforce the zero-sum relations between government and opposition in the country, which is further illustrated by the politicisation of the trials against RPA leaders for the violent suppression of 2008 post-electoral protests. In addition, this democratic weaknesses and entrenched political inequality reinforce the lack of trust of the citizens towards the institutions. Against this background the unconventional participation in form of protests appear to have gained new legitimacy in the last years, due to the lack of access or effectiveness of the mechanisms for institutional accountability.

The trends of dominant competition and power concentration influence strongly the Rule of Law reform processes. In Armenia a key challenge was the vertical and closed decision-making and legislative process. The EU support concentrated on the creation of a comprehensive and inclusive reform strategy EaP. However, the norm development and implementation did not follow the same inclusive path as illustrated by the network analysis in this Chapter. It shows a much more limited involvement of institutional and social actors. The individuals involved in the Commission illustrate the power centralisation in the executive, which can be clearly established as the most represented institution in the affiliation network. It is mostly represented by the Prosecution Office, the Council of ministries and the President.

Furthermore, this closed dynamic is reinforced by the lack of civil society member and even the Judiciary is less represented. Most members of the commission have a background in the political environment of the governing elite, where the hierarchical obedience is valued. This dynamics is illustrative of the high political influence and the low societal accountability of the process. The weak progress can be explained with the limited preferential fit of the reforms with the interests of a majority of the members of the Commission, given the power centralisation in the executive. Therefore, the lack of effective progress is related with the centralised and closed dynamics of policy-making, in a political system in which the President and the dominant party exerts unlimited influence over political and judicial institutions.

This lack of transparency and involvement of civil society actors and of the effective possibility of the opposition to influence the reform processes have influenced negatively the process and the outcome of the reform. The outcome of this process is limited as relevant norms and independent institutions have not been set up. The lack of overlap between the preferential fit of dominant domestic groups with EU promoted reforms due to the potential loss of power, made impossible the advancement of such reforms in spite of the economic incentives and socialisation efforts of organisations as the EU and the CoE. Ironically, the impossibility to influence policy-making through formal decision-making processes has led to the creation of opposition movement that gained power and sought the expert support and increased incentives provided by the EU in the field of democratic reforms.

The opportunities of the competing alternatives of the EU and EEU have been also skilfully managed by Armenian elite, which, in spite of the structural dependency of its country, have claimed since 2013 that geo-political and geo-economic alignment with Russia does not necessarily imply the need to follow an authoritarian form of government. In this way, Armenian elite has linked EU support with the values of democracy, Rule of Law and modernisation. This discursive shift has allowed Armenia to pursue a strategy of diversification of its foreign policy, in a way which allows it to take decisions in a more autonomous way. In this context the competing regional alternative are conceived as opportunity structures which feed into the alternatives considered by the domestic elite. However, it is important that this innovative strategy also imply greater instability. It is also important that the case of Armenia shows that both the EU and Russia have shown additional flexibility and capacity to adapt the regional framework for cooperation to the needs and changes in Armenia. In spite of this, Armenia has received the smallest amount of EU funding in comparison to the other case studies, that have an AA/DCFTA signed.

<b>Independent variable</b>	<b>Contextual propositions 2008 - 2013</b>	<b>Causal propositions 2012 - 2016</b>	<b>Outcome (institutions)</b>
State existence threatened by external conflict	<b>Centralized decision- and law-making</b> Top-down decision-making. The <b>President nominates key figures</b> in the Judiciary and the Prosecution, which implied to lack of external independence of the Judiciary. Limitation on freedom of expression and assembly. Ineffective check and balances due to external influence of the President on the Judiciary.	2014 amendment of the Judicial Code that <b>clarified the institutional framework, but no guarantees for independent disciplinary proceedings</b> The hierarchical system, the Court of Cassation, the CoJ, the CCC interfere with <b>individual independence</b> . <b>External: The President</b> approves promotions and nominations of judges, nominates Court Chairs. <b>2015 constitutional amendment</b> – SCJ elected by Parliament and the GAJ. Elimination of CCC. Judges cannot be transferred without their consent, but the president controls nomination of judges and the MoJ initiates disciplinary proceedings.	<b>The individual impartiality</b> of judges is still subject to be influenced by superiors. Since 2015. The Parliament approves and dismisses the Prosecutor general with at least three fifths of all votes, even if he has “committed a violation of the law” or “the code of conduct of the prosecutors” After the 2018 Revolution, the ministry of justice is the least reformed. <b>Criminal prosecution of former government</b> representatives for 2008 violation of citizen’s rights. Transitional justice and fight against corruption.
High Ethnic homogeneity Nationalist parties.	<b>Political competition</b> Dominant party (20 years in government) Isolated, fragmented opposition–zero-sum relations. Patrimonial networks depend on the domestic resources	2013 Ombudsman reports <b>institutional pressure and prosecution (via disciplinary proceedings) of individual judges</b> that disagree with the Court of Cassation on sensitive cases <b>High political influence and the low societal accountability of the Commission in charge of the implementation.</b> PG nomination criticised - the RPA can nominate and dismiss him.	Pashinyan charismatic leader with sur-plus majority. No geopolitical changes and adopts pro-EU discourse.
Digital media	<b>Limited social participation in top-down governance</b> 1999 – 2011 suppression of protests	Increased unconventional participation by the opposition, civic movements Ineffective public debates organized by CSO.	Civil society actors criticize the lack of reform in the Judiciary, in spite of the high expectations for the new Minister of Justice.
EaP created, AA/DCFTA negotiations	<b>AA/DCFTA negotiations</b> initiated. Increased incentives as funding, training. EaP supports and requires inclusive and comprehensive reform strategies in RoL.	<b>AA/DCFTA negotiations</b> concluded in 2013, without significant change in citizens’ rights or any political costs for the domestic elites – Reduced credibility. <b>Venice Commission and GRECO, OECD reflected the pressure on judges via disciplinary proceedings</b> and the possibility for political influence on the CoJ. Acknowledged the Ombudsman’s conclusions.	The EU-Armenia cooperation <b>focuses on democracy and increases its support.</b> <b>A more critical stance after the adoption of CEPA in 2017.</b>
Econ, military dependent on Russia	<b>2013 Russia pressure for EEU integration</b>	EEU membership agreement 2014. Transfer of key assets to Russia 2016 Russia sells arms to Azerbaijan. Reduced legitimacy of Russia as security guarantor.	Russia considers it is <b>domestic issue</b> of Armenia, as the Revolution does not imply geopolitical change. But <b>protects RPA elite</b> .

*Table 2. Causal mechanisms in Rule of Law Armenia 2013 – 2018*

## ***V CHAPTER. GEORGIA***

### ***I. REFORM IN THE FIELD OF RULE OF LAW IN GEORGIA***

The legislative process in Georgia is initiated by the government with the drafting of the law by an expert working group involving representatives of different ministries, institutions, the legislative, judiciary and civil society organisations. For the Prosecution and Judiciary reform, the Anti-Corruption Council and the Criminal Justice Inter-Agency Coordination Council (CJIACC) was established under the Ministry of Justice with consultative, drafting and institutional coordination functions. The second stage is the Parliamentary review when consultation and access to information is possible also through the CJIACC and the committee hearings. Thirdly, the review of the amendments takes place in the parliament (Lovit, 2016).

The reform process in Judiciary was initiated after the Parliamentary elections in 2012. The CJIACC was initially established in 2009 and involved representatives “of state agencies, of donor/international organisations, NGOs and independent experts” (Ministry of Justice Georgia, 2018). Different working groups were established under the CJIACC until 2015 and a detailed Criminal Justice Reform Strategy and Action Plans were developed for the period between 2012 and 2015. The Judicial reform in Georgia took place in four stages. The first three waves took place between 2012 and 2016 in the CJIACC, while the “fourth wave” was initiated in 2017 and continues until today as part of the Comprehensive Judicial Reform Strategy (2017 - 2021) implemented by the Judicial Strategic Committee.

As a consequence in the field of Rule of Law of the UNM government, the 2012 elections were defined by the broad social and political agreement between different parties and organisations regarding the need of effective reforms in this field. In addition, the electoral results allowed the Georgian Dream coalition to count on the support of 85/150 Members of Parliament (MP). Therefore, the governing coalition counted with the required majority in order to implement the Rule of Law reform that was identified as its main programmatic goal. In addition, these coordinated efforts on the political level have also been supported by a broad coalition of CSO, the Coalition for Independent and Transparent Judiciary (CTIJ), which as a union of 31 CSO was established in 2011. In 2012 the CTIJ had prepared a detailed report identifying the weaknesses in the Judiciary, among which were the “unreasonable limitations placed on rights of judges; politicized HCJ, too much power in the hands of court presidents, uncontrollable leverage for influencing judges, including assignment of a judge and disciplinary proceeding” (Verdzeuli, 2012).

The “First wave” of reforms was adopted the 01 November 2013. It adapted the Organic Law on Common Courts to the 2010 Constitutional reform. The initial stage of the reform is defined by its more consensual character, partly because it focused on implementing the constitutional reform and the adoption of the recommendations of civil society actors (Transparency International Georgia, 2016). The main innovations during the First Wave of reforms referred to the membership of the High Council of Justice (HCJ) in order to reduce the political influence on the Judiciary. The non-judicial members of the HCJ nominated by the Parliament will not be members of the Parliament, but instead will be representatives of the Judicial profession. The President also lost his power to nominate members of the HCJ.

Chairpersons of courts, their deputies and chairpersons of chambers and collegiums were banned from being elected as members of the HCJ. This provision has been justified by the Minister of Justice as a prevention of accumulation of extra powers of “those judges who already keep various positions” (Civil Georgia, 2012b). As a consequence of these new nomination rules, in 2013 14 out of the 15 HCJ members were seized (Civil Georgia, 2013a). The new nomination procedure took place in May – July 2013 and was considered as transparent (Transparency International Georgia, 2016). Importantly, the regulation that banned court chairpersons was reverted in 2017, prior to the next HCJ nomination.

Secondly, the role of the Judicial self-governing bodies was strengthened, through the nomination of the President of the HCJ by the Conference of Judges, instead of the Chairman of the Supreme Court as before. The 2013 reform increased the transparency of the court proceeding with the requirement to produce minutes and to record the meetings. The individual independence of judges was strengthened through additional institutional conditions, as the separation of the Disciplinary Board from the HCJ. In addition, its members are nominated by the Conference of Judges, and not by the President of the Supreme Court as before.

The transparency and the accessibility of disciplinary proceeding was increased, as public access to these proceedings was partially allowed. Some of the motives for disciplinary proceedings, as “a gross violation of a law by a judge” and “breach of internal regulations” that were previously criticised, were deleted. The Director of the High School of Justice would be selected by an independent council from the Judiciary, rather than by the Chairman of the Supreme Court. In summary, the First Wave of reforms was a step towards depoliticization of the HCJ and the redistribution of the decision-making capacity that was previously centralised in the Chairman of the Supreme Court and the HCJ (Transparency International Georgia, 2016). It also regulated the requirements for sending a judge on an official assignment, as his consent was required and the maximum term was one year (Nozadze *et al.*, 2017).

The Second Wave of Judicial reforms refers was adopted the 01 August 2014. It was criticised, because it introduced a 3-year probatory period as a condition for life-time appointments. This new requirement was adopted in spite of the opposition of the Venice Commission, the EU and the domestic actors. The possibility for such probatory period was introduced in the 2010 Constitutional amendment, approved by the UNM. However, the Second Wave of reforms amended the Organic Law of Common Courts and applied it as a compulsory measure to all judges. The continuity between UNM- and GD-government, and even the further development of the legislation on the probatory period illustrates that the position of power influences the perception of resonance and salience of the norms.

In spite of the opposition of international and domestic actors to abolish these measures, it presents clear continuity. This measure allows the higher hierarchical levels in the judiciary to control the appointment judges, reducing significantly the individual independence of judges through the informal career sanctioning of more or less obedient judges. This measure shows how the cost-benefit analysis was prioritised over the international and domestic pressure that was pointing to the lack of salience of his measure. The Supreme Court Qualification Chamber was established for appeals when judges are not appointed. In addition, the full jurisdiction of jury trials was postponed until 2016 (Article 42 of the Constitution *et al.*, 2015).

The Third Wave of the judicial reform started at the end of 2014 and it has led to increased criticism by domestic CSOs. It is hypothesised that this Third Wave involved a shift in the executive's strategy, as the progress of the reforms was stalled for two years and the Forth Wave of reform a new approach was adopted. In July 2015 the Ministry of Justice initiated the parliamentary discussion on the draft laws developed since September 2014. They suggest changes in key Judicial fields as the "random distribution of cases [...] the conflict of interest within the High Council of Justice" and the appeals of the HCJ "decisions refusing the appointment of judges" (Article 42 of the Constitution *et al.*, 2015: 59). The initial draft included several amendments initiated by the Chairperson of the Supreme Court, among which were the institute of inspector, the establishment of a Management Department, a minimal number of votes required for the "imposition of disciplinary responsibility, institute of deputy chairperson of a court, probation periods for current judges" (Tsimakuridze and Mezvrishvili, 2016: 60). According to the Minister of Justice, the goal of the Third Wave of Judicial reforms was to guarantee the independence of judges, not only from interference of other institutional actors, but "also from their own leadership" (Kvira, 2015).

The first reading in the Human Rights and Civil Integration Committee and the Legal Issues Committee of the legislative draft took place the 07 October 2015. However, after these

initial stages the review of the draft in the Parliament was suspended until 2017 when significant changes had been introduced in the text. Civil society organisations claimed they did not receive clear reasons for the suspension of the process from the Ministry of Justice and the Parliament (Tsimakuridze and Mezvrishvili, 2016: 60). Between 2015 and 2017, several meetings between representatives of the government, leaders of the Georgian Dream and the Judiciary took place. The first meeting took place the 18 May 2015, even before the Committee reading of the draft and was “attended by the Chairman of the Supreme Court of Justice, the Deputy Minister of Justice, Secretary of HCJ and judges from various courts” (Tabula, 2015).

Media outlets informed that the representatives of the Judiciary expressed their disagreement with the “early termination of powers of chairpersons of courts, the “introduction of a new procedure for the selection of chairpersons, and the creation of an institute of inspector and of a Management Department” (Tabula, 2015; Tsimakuridze and Mezvrishvili, 2016: 60). They argued that “the early termination of office serves to remove undesirable judges and replace them with more acceptable” (Tabula, 2015). In addition, the HCJ Secretary argued that the Venice Commission, international organisations and CSOs oppose this reform, due to the possibility of executive influence on the judiciary. The United National Movement (UNM) also expressed its disagreement with this reform (Tabula, 2015). On the other side, the Chairman of the Supreme Court argued that the Court presidents face real challenge in dealing with both managerial and professional work and she claimed that “the establishment of an independent inspector's institute was necessary” (Tabula, 2015). The 7 July another similar meeting between the Prime Minister and the Secretary of the HCJ took place.

The 19 October 2015, after these events and after the reading the Parliamentary Committee, the Minister of Justice met with 160 judges, without attendance of the Chairman of the Supreme, Nino Gvetenadze. At this meeting it was agreed to delay the adoption of the random case distribution system, due to the unpreparedness of the Judiciary. The judicial representatives openly disagreed with the suggested procedure for disciplinary responsibility, the chairpersons’ role and the probation period. The Minister of Justice underlined that given the judges’ “categorical objection” of some of the suggestions, as the requirement for secret ballot in the voting of the disciplinary proceedings, it has been cancelled, while the required two-thirds majority was maintained.

The suggestion to abolish the Deputy role and the regulation on the selection of the Presidents of the Court by the judges of the Court was also discontinued due to judicial opposition (Tabula, 2015). The Court Presidents are currently elected by the HCJ, which allows

to exert top-down influence in the Judiciary. Given the extensive authority and powers of the Courts' Presidents, different observers (CoE and CSO) welcomed the possibility for Court members to select with secret ballot the Court President (European Commission for Democracy through Law, 2014). However, as a result of Judicial resistance, this amendment was removed. The President of Georgia vetoed the amendment based on the CoE recommendation (Nozadze *et al.*, 2017). But the Parliament managed to override the Presidential veto. The politicisation of this change indicates that the control of this institutional positions is a key institutional asset, given that the Court Presidents had the responsibility to allocate cases at that point.

Furthermore, it was agreed to retain the three-years probatory period, except for those judges that have already served for 10 years. They will be permanently appointed if they receive the support of two-thirds of the HCJ. In addition, the judges disagreed with the introduction of Inspector and Management Department and the decision on this topic was left for discussion with the Chairman of the Supreme Court (Tabula, 2015; Tsimakuridze and Mezvrishvili, 2016). In 2017 the Third Wave of reforms continued with the introduction in the Law on Common Courts of the procedure for the selection of judges based on criteria of professionalism/competence and integrity. The competence criteria is developed with a scoring system and detailed rules for assessment, as well as a "procedure for reaching a decision and appealing it" and rules for information gathering (Nozadze and Shermadini, 2018: 28). A loophole in this regulation, however, is the lack of such definition of the criteria of integrity and the sources for information collection on this aspect. According to CSOs, there is no requirement to substantiate the decision for those judges that have been worked for 10 years in the Judiciary, and the decision is taken through secret ballot and no effective mechanism to appeal the decision is guaranteed (Nozadze and Shermadini, 2018). This loophole is reported to leave leeway for decisions based on subjective assessments (Nozadze *et al.*, 2017).

On the other side, the procedure for the lifetime appointment of judges currently in a probatory period includes an open ballot vote, substantiation requirement in case of refusal and publication of the candidates' file. Therefore, two very different procedures for the appointment of different groups of judges co-exist. These different rights and transparency raise serious question regarding the equal conditions of appointment. In addition, since 2017 significantly more candidates have requested closed interviews (4 in 2014 to 45 in 2017), which significantly reduces transparency (Nozadze and Shermadini, 2018).

### ***REFORM PROCESS IN THE PROSECUTION***

As a consequence of domestic and international pressure, in May 2013 a reform of the Law on Prosecution Service was developed. The Prosecutor General was in charge of

suggesting institutional changes, while the Minister of Justice approved such acts. The President retained the power to nominate the Prosecutor General, upon proposal of the Minister. In spite of excluding the Minister of the definition of “prosecutor”, the system remained highly hierarchical. The possibility to suggest and nominate the Prosecutor General de facto gives the executive the capacity to influence the developments in this highly-hierarchical institution (OECD - ACN, 2013). These weaknesses were criticised by domestic and international actors, including the EU which noted that the Prosecution reform is among the most urgent issues in 2013 and 2014 (European Commission and HR, 2015: 2). Furthermore, civil society organisations and domestic observers implied that the close links between executive and the Prosecution allowed the use of this institution for party goals.

The Association Agenda signed in 2014 included specific provisions regarding the need to set up an independent and truly professional Prosecution Office (European Commission and HR, 2015). In addition, the Coalition for Independent and Transparent Judiciary criticised that the selection of the PG is concentrated in the hands of the executive, “is completely devoid of professional criteria and is political in nature” and is de facto “fully in hands of the political party in power” without any inclusion of the opposition” (Coalition for Independent and Transparent Judiciary, 2015). Therefore, as in the case of the reform of the Judiciary a key domestic criticism is the concentration of power in the executive and in the ruling party.

As a consequence, since 2013 a new more inclusive composition (with CSO participation) of the Anti-Corruption Inter-Agency Council was set up for establishing a new strategic plan in order to tackle the long-standing problem of elite corruption (European Union and Republic of Georgia, 2014b). As a result, a new National Anti-corruption Strategy and Action Plan for 2015 – 2016 were adopted in February 2015. Their main goal is to strengthen the independence of the Prosecution through “improved procedure for appointment, promotion and dismissal of Prosecutors”, transparent system of remuneration and improve the disciplinary proceedings and liability, (anticorruption) specialisations within the Prosecution, development, implementation and trainings in ethic norms and principles (Ministry of Justice Georgia, 2015).

This Action Plan was extended to 2016-2017 and was accompanied by a parallel Human Rights Action Plan (HRAP) for 2016 - 2017. The HRAP defines several priorities for the Prosecution reforms, however, the main activities and indicators to be developed for guaranteeing an independent PO refer to the definition of a “handbook on holistic investigation methodology” or analysis “of alternative mechanisms for prosecution” (Ministry of Justice Georgia, 2017). Therefore, as criticised by domestic organisations and experts the HRAP lacks clear and specific activities and indicators that address and guarantee independence and

accountability of the Prosecution. Activities that focus on training, qualifications and evaluation of the prosecutors are not enough to reach the goal of “independent, effective and human-rights oriented criminal prosecution, as they do not address the political influence over prosecution decision-making and structure (Georgian Democracy Initiative and Institute for Democracy and Safety Development, 2018: 79). Therefore, key weakness of the process can be identified on the identification stage of the reform process.

The reform of the Prosecution Office was adopted in September 2015, and a “specialised Anti-Corruption Unit within the [Prosecution Office] was set up” with the aim to “investigate and prosecute cases of high-level corruption” (European Commission, 2015c). A new selection mechanism for the Prosecutor General was also introduced and a Council of Prosecutors and Conference of Prosecutors were created. The Venice Commission criticised the first draft law due to its limited effects for the de-politicisation of the Prosecution, as the selection procedure of the Prosecutor General was strongly dominated by the executive and the parliamentary majority. The Minister of Justice would suggest a candidate to the Council of Prosecutors, which would be approved by the Parliament with simple majority. Furthermore, the selection method of the members of the Council of Prosecutors was also seen as politicised, given that just 4(9) of its members were chosen among their peers. A first opinion of the Venice Commission criticized this procedure and suggested different possibilities for preventing political influence (Venice Commission, 2015c). The compliance with this goal was linked to the Visa Liberalisation Agreement with the EU.

As a consequence of the Venice Commission Opinion and the and the EU incentives, Georgian government made changes in the law adopted in September 2015. The Minister of Justice would suggest three potential candidates to the Council of Prosecutors, which would be composed by a more complicated combination of members. In spite of these changes, the Venice Commission concluded that “the procedure for appointment of Chief Prosecutor is still not fully balanced and that the “political element still remains predominant”, due to the significant involvement of the parliamentary majority (Venice Commission, 2015b: 7). Furthermore, the inclusion of the Council of Prosecutors in the Ministry of Justice and the Minister membership, continued the risk of politicisation of the Prosecution system (Venice Commission, 2015d). After the report was issued the number of Prosecutors member of the Council was increased from 9 to 15 with 8 members selected by the Prosecutors.

After the adoption of this reform a new Prosecutor General was selected with the new procedure. The 15-members Prosecutorial Council was de facto reduced to 14 members, due to the lack of nomination of a member by the parliamentary opposition, due to its criticism as

politicisation of the Prosecution reform. The new Prosecutor General nominated in 2015 was supported by 13 out of 14 Council members, but was highly criticised in the Parliament (Civil Georgia, 2015b), in addition to civil society organisations (Coalition for Independent and Transparent Judiciary, 2015). This dynamic illustrates the conflictual and exclusionary nature of the domestic reform process in Georgia.

The 2017 Constitutional amendment further developed the independence of the Prosecution, through its status as independent agency separate from the Ministry of Justice. The Prosecutorial Council was included in the Constitution as a guarantee for its independence, transparency and efficiency. In addition, the Council of Prosecutors and the Parliament (by simple majority) became responsible for choosing the Prosecutor General. Furthermore, the protection of the Prosecutor General was increased, as his removal is possible only through impeachment. He is also accountable to the Parliament, through the presentation of a report on the Prosecution activity (Parliament of the Republic of Georgia, 2017: Art 65). This reform was very positively assessed, as it included longstanding international recommendations.

However, the consequent legislative development in 2018 and 2019, did not lead to significant changes in the Prosecution. Both domestic and international observers assessed negatively, the limited changes in the responsibilities of the Council of Prosecutors. This institution does not have a leading role in any recruitment, promotion, discipline or dismissal procedures. Its work remained advisory which does not match its constitutional statute. Instead the Prosecutorial hierarchy remained effective. Besides, the Minister of Justice is no longer a member of the Prosecutorial Council, but has the prerogative to name one of its members, which does not imply a significant change in practice. Civil society also criticised the lack of guarantees provided for the individual independence and suggested the superiors' orders to be written (Human Rights Education and Monitoring Center, 2018; IDFI, 2018b; Interview 38).

The Opinion of the Venice Commission was published in November 2018 after the second reading of the draft law in the Parliament had finished. However, the government had clarified that the opinion will be taken into account for the third reading of the law (Venice Commission, 2018b). The main recommendations focused on the need to include in the law the rights of the prosecutors (as the need for written instructions), to upgrade the role and improve the selection of the Prosecutorial Council, to remedy the “full discretion [that the Prosecutor General has] on the careers of Prosecutors” (Venice Commission, 2018: 9).

Regarding the composition of the Council of Prosecutors it has been noted that its composition “achieves professional representation and expertise, but does not sufficiently enhance public credibility of independence” (Venice Commission, 2018: 9). Furthermore, both

the Venice Commission and CSO regretted that the recommendations for qualified majority in the selection of the Prosecutor General was not considered. The opinion suggests that “an enhanced representation from civil society” should be considered (Venice Commission, 2018: 9), which additionally strengthens the position of the CSO.

In spite of these domestic and international recommendations, the Law on Prosecution was adopted with the weaknesses underlined above. The case of the Prosecution reform clearly illustrates the way in which the normative discourses of the Venice Commission, the EU and domestic CSO reinforce each other. Domestic CSO indicated that their limited capacity to influence the direction in which the reforms evolve in the case of the Prosecution Office (Interview 41). This is the reason why they use as support the normative arguments provided by international actors as the EU, Venice Commission, OECD or GRECO in support of advancement of the reforms. Furthermore, international organisations provide funding for advocacy to CSO, which de facto leads to their differential empowerment. In addition, as it was illustrated CSO and the Venice Commission (and consequently the EU) have used very similar if not identic arguments in their exchanges with government, which provided legitimisation of the role played by domestic CSO (see for example IDFI, 2019).

In conclusion, the main aspect around which many domestic and international debates revolve is the competition for non-elected institutions. The conflictual relations from the electoral competition are transmitted to ‘independent’ judicial and law-enforcement institutions. The control of key institutional positions is an essential asset in the assessment of the preferential fit of the reform processes (DV3.), above the resonance and salience of democratic norms (DV2), even if they are normatively reinforced by international actors (IV2). Therefore, the main difficulty in the Prosecution reform is the lack of political will, given the concentration of power in the executive. The protracted features of the reform and the lack of effective advancement in granting effective independence of both individual prosecutors and in increasing the role of the Council of Prosecutors prove that losing the hierarchical and political control of the prosecution is an important asset for the governing elite (both from the UNM and the Georgian Dream government).

## ***II. IMPLEMENTATION OF THE REFORM***

The evolution of the reform and the actual operation of the Prosecution confirm the lack of guarantees of internal and external independence. Domestic experts argue that the problem with high-level corruption in Georgia persists due to the impossibility to independently investigate such crimes. Furthermore, the nomination of the prosecutor, Shalva Tadumadze,

which took place in 2018 before the entrance in force of the current procedure, has been broadly criticised due to his links with the President of the Georgian Dream – Democratic Georgia party (GD-DG). For instance, he was Bidzina Ivanishvili’s lawyer before taking several positions in the GD-DG government in 2012 (Transparency International Georgia, 2018b). His nomination seems to fit the model of recruitment on the basis of trust in the circle of Ivanishvili’s environment. In 2019 he resigned and was succeeded by the former Prosecutor General Irakli Shotadze, who had resigned in 2018 “in the wake of protests over an incident in Tbilisi” (RFE/RL’s Georgian Service, 2020). This succession of controversial or politicised figures on the position of Prosecutor General has negative effects over the lack of trust in the institution.

Both civil society organisations and analysts of the domestic events in Georgia refer to the close links between executive and the Prosecution Office and the consequent possibility of use of this institution for party goals. For instance, survey-based research by NGOs reflects that in 2016, 40% of respondents that have heard about the 2015 Prosecution reform consider that this institution “serves the interests of the ruling party”, while 36% think that “it is free of political influence” (IDFI, 2018c; Transparency International-Georgia and the Caucasus Resource Research Centre (CRRC), 2018). Furthermore, domestic and international observers have noted the possible use of the Prosecution as an instrument for manipulating the political allegiances and/or for the discreditation of local and national politicians. For instance, the change of government in 2012 was succeeded by the criminal charges against more than 30 officials and 14 pre-trial detention of UNM members. It was pointed that “in some cases the investigations stopped altogether after the individuals changed their party allegiance and left the UNM” (Emerson and Kovziridze, 2018) or when high level officials resigned as was the case of the Minister of Agriculture (Civil Georgia, 2014c).

Another highly politicised case of pretrial detention against officials from the Ministry of Defence in 2014 led the party Free Democrats to leave the Georgian Dream coalition, claiming that the investigations were “politically motivated” (Civil Georgia, 2014a). International and domestic observers criticised the use of pretrial detention in suspected cases of corruption. Such politicised investigations have also acquired a geopolitical character in the case of Georgia, as the Free Democrats identified the arrests as an “attack on Georgia’s Euro-Atlantic choice” and other international observers “have been quick to attributed [the arrests] to the alleged “pro-Russian” leaning of Georgian Dream (Welt, 2014). This (geo-)politicisation of domestic disputes based on acts that are perpetrated by allegedly politically influenced institutions have clear effects for domestic competition. This dynamic clearly illustrates the

intertwining even on discursive level of domestic and geopolitical arguments in a highly politicised context as the one in Georgia, where Rule of Law institutions are used as political instruments under the pressure of the executive.

Like it happened with the Prosecution reform, the implementation of the Judicial reform, implied further politicisation and polarisation. The conflict of interests in the selection of judges prohibits the participation of HCJ members in the voting of competitions that they are involved in. However, other aspects of the conflict of interest are still not regulated (Nozadze *et al.*, 2017). For instance, in the 2019 selection of Supreme Courts judges, two members of the HCJ had family relations with two of the candidates and did not recuse themselves (Coalition for Independent and Transparent, 2019). Furthermore, the procedure for the selection of Court Chairpersons by the HCJ was not defined. This decision stalled after the opposition of the judiciary to the first draft of the Third Wave reforms, which regulated their election by court members and strengthened in this way the role of judges. In addition, the HCJ has retained its power to change the specialisation of judges without clear requirements for substantiation. This aspect was criticised by CSOs (Nozadze and Shermadini, 2018).

The Third way of reforms significantly strengthened the role of court chairpersons. Given that the ban on their election for the HCJ was abolished, in 2019 four out of eight judicial HCJ member were court chairpersons (Nozadze and Shermadini, 2019). The chairpersons are also in charge of supervising the work of staff and until 2018 for case-assignment. In 2017 a regulation for the automatic case allocation was adopted, but was implemented in the Fourth Wave. Due to domestic criticism, the dismissal of chairpersons was also regulated in the Third Wave of the reforms (Nozadze and Shermadini, 2019). In spite of the resistance of the Judiciary, the management Department was also established in order to supervise the software of random case allocation, to study the “flow and volume of cases managed, improvement of managerial skills of the Court Chairpersons” and preparation of recommendation on court administration (Nozadze and Shermadini, 2018). In addition, the Independent Inspector’s Office was established with the goal to examine the allegations for disciplinary proceeding.

The Fourth Wave of reforms is entrusted to a new Judicial Strategic Committee under the Comprehensive Judicial Reform Strategy (2017 - 2021) and has not finished yet. The Inspectorate and the random case allocation system were developed. However, the Court chairpersons still retain broad functions, as the right to “review the number of cases allocated to judges, to increase or reduce the workload of judges”, to “relocate judges of narrow speciality without providing justification”, to “determine the schedule of judges”, and to increase the workload of a member of HCJ, (deputy) chairpersons (Mkhatvari, Talakhadze and

Kukava, 2019). These prerogatives still allow court chairpersons to influence the case allocation. The Venice Commission suggested the definition of “detailed technical rules” in order to guarantee the equal and random distribution of cases (Venice Commission, 2014: 16).

The Independent Inspector’s Office increases the transparency of the process and provides further guarantees and rights to individual judges. However, the lack of clear definition of the goals of disciplinary liability and the types of misconduct affects negatively the foreseeability and clarity of the provisions. The uncertainty on what constitutes improper performance of duties and inappropriate actions as a basis for disciplinary liability would need to be clarified in order to guarantee independence (Venice Commission, 2014c; Mkhavari, Talakhadze and Kukava, 2019).

The internal dynamics and protracted character of the Judicial reform in Georgia indicate that the main asset for the governing elite is to retain control over key institutional positions. Such measures that allow hierarchical and the political control of the Judiciary are the 3-years probatory period and the controversial nominations of the Court Chairpersons, which still retain certain control of the judicial process. Lastly, very polemic and politicised was the process of nomination of judges of the Supreme Court that took place in 2019, due to the crystallisation of many internal conflicts in both the legislative and the judiciary. Currently four chairpersons are members of the HCJ. This change contradicts the 2013 ban on Court Chairpersons membership in the HCJ, which aimed to prevent the concentration of power in few individuals of the Judiciary. Instead the politicization of institutional nominations and the change of membership of HCJ indicates informal cost-benefit assessment of the benefits that such steps would bring to the political and Judicial elite. The nominations that followed the reform confirmed this struggle between political actors and social actors for institutional positions.

Since mid-2018 GD-DG intra-party competition influenced the nominations for the Supreme Court by the HCJ. A faction led by Eka Beselia and Popkadze (which claimed to be the initial supporters of the party) opposed a faction led by the Parliamentary Chairman Irakli Kobakhidze. Beselia claimed that the HCJ is dominated by judges obedient to the UNM autocratic regime. Such argument on the control of the judiciary by a ‘clan’ of judges with doubtful track-record, is frequently used by CSO. However, it was the first time that GD-DG member, Eka Beselia, resorted to this accusation. An important part of these judges became members of the HCJ in 2014, without any such claims by GD-DG members.

Importantly, the same ‘clan’ of judges expressed their institutional resistance to the Third Wave of reform in 2015. The Minister of Judiciary, the Prime Minister and the leader of the GD-DG party Ivanishvili led the negotiations with these judges. At this point, when the

Parliament was isolated from the debate for a period of 2 years (2015-2017), Eka Beselia did not express any criticism. This did not happen neither when the legislative amendments of the Third Wave reforms, result of the negotiation between executive and Judiciary, were adopted in 2017. Consequently, it appears that the use of normative arguments as the independence of the Judiciary against the nomination of the ‘clan’ judges are instrumental in this intra-party conflict. As a result of this conflict Eka Beselia and her supporters quit the GD-DG party, reducing in this way significantly the parliamentary majority of the DG-DG.

The hasty and non-transparent nomination of the Supreme Court members in 2018 was strongly criticised by CSOs and by non-judicial members of the HCJ. As a consequence of the politicization of the selection of Supreme Court judges, the initial list of nominations was suspended and an amendment of the Organic Law on Common Courts of Georgia and of the Rules of Procedure of the Parliament was elaborated. The suggested amendment was sent to the Venice Commission for its opinion. Among its recommendations were included suggestions to increase the required years of experience, to include the requirement of the judicial qualification examination for non-judge candidates and to increase the transparency of the process through the abolition of the secret ballot, prevention of conflict of interests and to introduce a requirement for argumentation of the decision.

In addition, the Venice Commission noted that through the 2019 procedure would be appointed 18 out of 20 Supreme Court judges for life. Given the low social trust in the HCJ, the Venice Commission recommend to transform “the fixed term of office of the current Supreme Court” to lifetime appointments and presently appoint only “the number of judges that is absolutely necessary to render the work of the Supreme Court manageable” (Venice Commission Council of Europe, 2019: 13). The European Union also issued a very critical statement (European External Action Service, 2019). Many of the recommendations were adopted. However, the suggestion to avoid nominating 18 out of 20 Supreme Court members with this procedure and postpone it partially for a period after the next parliamentary election was dismissed by the Speaker of the Parliament, Irakli Kobakhidze, as a “political recommendation” that will be discussed by the GD-DG Party, but not reflected in the draft law (Kobakhidze, 2019). This case of internal party competition confirms that the main issue of political interest revolves around the control of key positions in the Judiciary and international actors did not manage to change the preferential fit of the government.

In a similar way, one HCJ member was not nominated for four years, due to the impossibility of the ruling party and the opposition to reach an agreement on a mutually accepted candidate. Eventually, the rules of procedure of the Parliament were changed in order

to abolish the qualified majority requirement and the last member of the HCJ was elected with the support of the governing party. In the same line of political conflicts that influenced the decision-making in the Judiciary, civil society organisations have reported that unethical attitude has been demonstrated towards HCJ members and attendees with dissenting opinions (Nozadze and Shermadini, 2018). A similar negative attitude was also manifested towards an alternative union of Judges - the Unity of Judges established in 2013 and considered as an alternative to the dominant group of judges. Some of its members were subject to disciplinary prosecution and refused reappointments. Furthermore, in 2017 when the organisation “criticised the process of appointment of judges, 20 of its members left the union”, leaving it without any members (Nozadze and Shermadini, 2018). Currently, the majority of judges are member of the Association of Judges, which is chaired by the former Secretary of the HCJ and its board includes mainly members of the HCJ (Nozadze and Shermadini, 2018).

In conclusion, the processes of political competition have been defined by gradual decrease to the elite loyal to GD-DG goals and methods. Similar dynamic of reduced representativeness is observed in the judiciary, where alternative unions and criticism against HCJ has practically disappeared. The consensual or collaborative attitude was replaced by exclusive and conflictual approach in the negotiation between different factions. This is not surprising given that the main political incentive is the control of institutional positions, which is achieved through the isolation of alternative unions or critical factions.

### ***III. CONTEXTUAL FACTORS***

The Rule of Law reforms require the consideration of the context in which they take place. Georgia, in contrast to Armenia, has a multi-ethnic population of around 12 ethnic groups, with the prevalence of 70% of Georgians. The first half of the 1990s was defined by an open civil war and the lack of effective control of the territory. The former First Secretary of the Georgian Communist Party and Foreign Minister of the Soviet Union, Shevarnadze, was elected President and in 1995 he achieved semi-functional central state after demilitarizing the violent groups (Hale 2015; Stefes 2006a). Shevarnadze government lasted until 2004 when he was removed by the Rose Revolution, as he had lost the support of his state administration and high-level officials rejected to take actions against the protests. Unlike Armenia, Georgia’s state structure was weak, which has undermined the autocratic trends of government and reinforced the influence of social opposition (Way 2009: 113-116).

The new government headed by Saakashvili had a significant electoral majority (96,3% of the electoral votes in 2004) and managed to implement very effective anti-corruption reforms (Stefes 2006a: 54). Its main achievement was the significant reduction of petty-

corruption in sectors that citizens experience in their everyday life, as “policing, registering property, licensing businesses, and tax administration” (see Figure 7) (Kupatadze 2016: 16). However, a 2005 Constitutional amendment gave broad prerogatives of the executive over the legislative and the judiciary, which in combination with the wide parliamentary majority of United National Movement (UNM) implied in practice that the executive controlled norm selection, adoption, implementation and enforcement. These broad powers were also used for sanctioning potential opponents, while not disciplining loyalists to the regime. Those that disagreed with Saakashvili’s policies found numerous judicial and administrative hurdles, while the same rules did not apply to its supporters. The UNM government (2004-2013) was defined by an informal system that “created incentives for politicians and businessmen to join his side and make donations to his party” (Berglund 2014: 451).

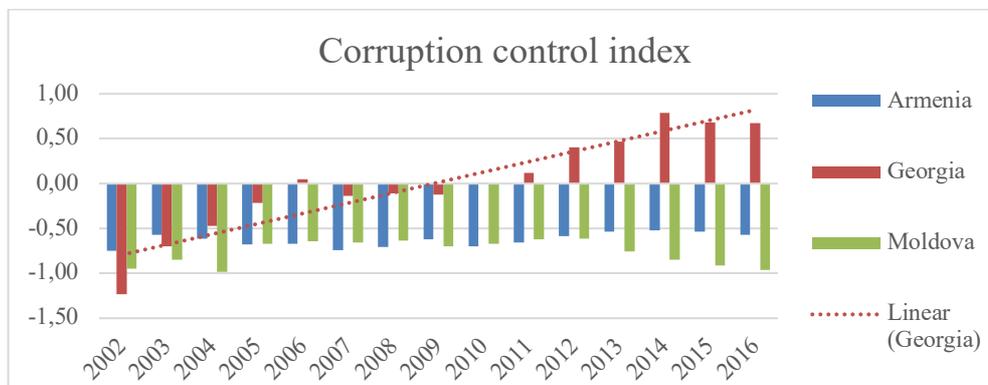


Figure 7. Corruption control index 2002 – 2016. Source: Author’s compilation based on the Control of corruption, worldwide governance indicator (World Bank, 2017).

The second Saakashvili government (2008 – 2013) illustrated the negative effects of the centralization of power and of the blurring of boundaries between the state and the governing party, which led to the dominance of the political goals over the rights of the citizens. Human right violations by state institutions as unjustified deprivation of liberty and “brutal and systematic ill-treatment in prisons” and the development “an extensive surveillance system” were some of the trends criticized by domestic (Ombudsman and civil society organisations) and international observers (Hammarberg, 2013: 5). This led to the lack of check and balances between the different power branches, as the UNM controlled the executive, the legislative and the local administration (Hammarberg, 2013: 5).

In 2012 when the change of government took place in Georgia, the reform of the Prosecution Office was perceived as one of the most important issues, due to its effective subordination to the executive. Scandals related with illegal recording by the Saakashvili government proved how the prosecution was used for political goals (Radio Free Europe and Georgian Service, 2013; US Department of State, 2013; Kupatadze, 2015). Georgia’s

prosecution has adopted all three institutional models. Between 1995 and 2008 the Prosecution Office “acted as single centralised institution within the Judiciary”, while the Prosecutor General was “elected by the Parliament” after the President’s nomination (Human Rights Education and Monitoring Center, 2018: 9). After 2008 it was “defined as an agency within the [...] Ministry of Justice” and the Prosecutor General was elected by the President after a nomination by the Prime Minister (Human Rights Education and Monitoring Center, 2018: 9-10). The Minister of Justice was the head and had the right to issue hierarchical orders, following the French institutional model.

The lack of balance between the prosecution, the defence and the Judiciary can be illustrated by the extensive use of plea bargain and the very low proportion of acquittals. In 2011 “98% of cases resulted in guilty verdicts” and more than 80% of all cases “were concluded with plea bargain” (Supreme Court of Georgia, 2011; quoted in Article 42 of the Constitution *et al.*, 2015: 19). This is assumed to be an indication of the lack of independence of the Judiciary and pressure exerted from the executive and the Prosecution. The fairness and equality of the Judicial system was significantly reduced, affecting negatively also the citizens’ trust in the state institutions (Figure 8 below). After 2010 there was public recognition that a reform in the Judiciary and the Prosecution is required for achieving a balanced and functioning Rule of Law governance (Georgian Dream, 2012).

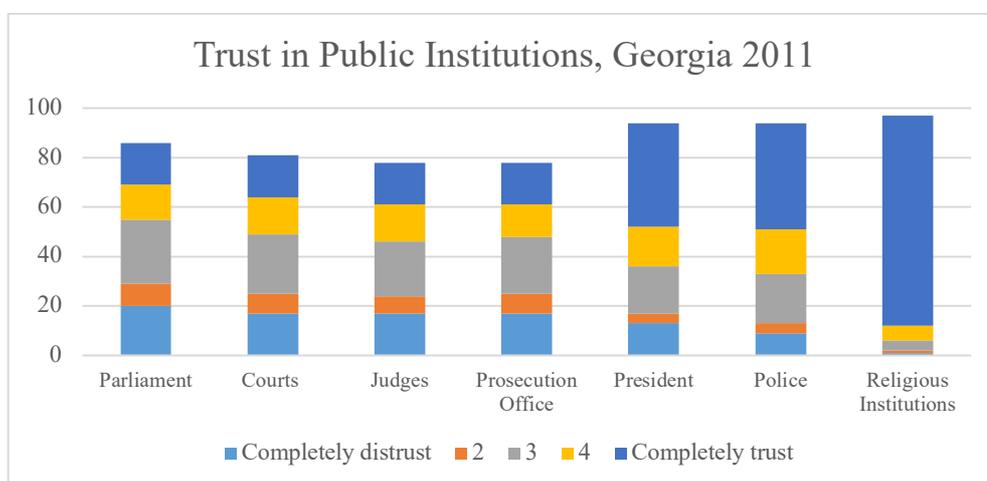


Figure 8. Trust in Public Institutions Georgia 2011. Source: (Caucasus Barometer, 2014).

International actors recommended to reform this institutional framework. In 2011 the ENP monitoring reported that “the main problem [for ensuring citizens’ right to fair trial] is the strong position of the prosecutor and the lack of independence of the judiciary” (European Commission and HR, 2012: 5). The OECD Anti-Corruption Network (ACN) suggested to “review the current system of plea bargaining to prevent abuse of prosecutorial powers” and to “reduce the potential influence of the Minister of Justice on operational decisions of

prosecutors on individual corruption cases” (OECD - ACN, 2013). The CoE expressed its concern both with the “separation between the politically appointed [...] Minister of Justice” and the prosecutors, both in terms of individual prosecution decisions and the actual chain of authority (Venice Commission, 2009: 6-7).

These weaknesses shaped also the 2012 electoral programme of the GD-DG, where the first chapter of the programme on “Democracy and Justice” is developed in a total of 16 out of 70 pages, in contrast to the other 13 topics discussed in five to seven pages each. Rule of law is defined as “a means of suppressing arbitrariness”, while the main pillars of UNM regime are the lack of separation of powers, a “one-party parliament”, “highly politicised prosecution and police”. The judiciary is seen as “only formally independent”, while being “fully controlled by political power, and in the hands of unprincipled judges” (Georgian Dream, 2012: 5). The programme suggests a constitutional reform for an institutionally independent Prosecution, the judicial selection of more than half of the members HCJ, and for individual independence of judges (Georgian Dream, 2012: 11-12). This programme shows the resonance and salience of the Rule of Law among GD-DG’s elite, which was instrumentally used with electoral goals, as the actual reform process showed. Consequently, this evidence has high accuracy, but low uniqueness in terms of confirmation the actual resonance and salience of the GD-DG, as it mobilised normative arguments in support of the electoral campaign.

Key aspect in the field of political competition and participation is that the political elite in the legislative and executive had been renewed to a certain degree. The core of the United National Movement was formed around a “young reformist wing” (“New Reformists”) of Shevardnadze’s governing party, led by personalities as Saakashvili and Zhvania. As they had been active members of the previous government, they were consequently accused by other opposition factions of being a “tactical, not a principled opposition” to Shevardnadze (Khutsishvil, 2008: 139). Political parties as the Republican and the “New Rights” Party abandoned the coalition with the UNM in the first two years after 2003 (Khutsishvil, 2008).

In addition, the Revolution and the UNM benefitted from the increased capacities and activism of many civil society organisation, to the degree that the government “was sometimes called an NGO government” (Nodia, 2013: 34). Some of these organisations were the Georgian Young Lawyers Association (GYLA), Open Society - Georgian Foundation, the Liberty Institute, Alpe, the Civil Development International Center and the Caucasus Institute for Peace, Democracy and Development (Khutsishvil, 2008; Muskhelishvili and Jorjoliani, 2009). Some civil society representatives withdrew from the government after the first years, due to differences in principles and values (Khutsishvil, 2008).

The change of government in 2012 brought to power the coalition of forces Georgian Dream – Democratic Georgia (GD-DG) lead by the recently-returned from Russia wealthy businessmen and philanthropist – Bidzina Ivanishvili. The coalition included the Republican party, the Free Democrats party (presided by Irakli Alasania) and the New Rights party (Civil Georgia, 2009b). The other members in the coalition were the Conservative party, National Forum and Industry will save Georgia. Importantly, key feature of the GD-DG party is its recruitment based on the “loyalty to its founder” Ivanishvili (Levan Lortkipanidze, 2016). Ivanishvili’s support of sports, culture, science and arts intelligentsia has led to the inclusion in the party lists of different representatives of this group, as well as medium and large business owners, white-collar experts and former employees in Ivanishvili’s businesses. The recruitment of “famous actor[s] or someone similar”, employees in Ivanishvili’s enterprises has been traced by researchers and CSOs (Chedia, 2015; Transparency International Georgia, 2018a).

The dynamic of turnover between CSOs and institutions has certainly contributed for the politicisation of the civil society sector. As a consequence governmental officials or GD-DG members accuse CSO of being “satellites of the United National Movement and only aim[ing] to discredit the government” (Agenda.ge, 2018b). On the other hand, civil society claims that such “aggressive rhetoric” represents a “coordinated attack [and] diminishes the possibility of constructive dialogue” (IDFI, 2018a). Furthermore, this high polarisation can be also explained by the conflictual political culture in Georgia. Domestic actors oppose each other in order not to legitimise the decision of the conflicting part (Interview 18). External observers have identified this phenomenon as “Tamada culture” that claims the “right of one’s own opinion”. When faced with overwhelming opposition, “instead of actively engaging with each other and criticising each other’s drafts”, the “discussion is restricted to two [parallel] monologues” (Babeck, 2012: 66-67). In conclusion, in such conflictual culture and highly polarised context, political competition and event civil society participation might be characterised by strategies of discreditation and politicisation of a what is ‘perceived’ as the opposed party. The relationship between GD-DG government and the CSOs has been subject to evolution, being positive at the beginning of its mandate (Mkhatvari, Kukava and Talakhadze, 2018).

Georgia’s position in the international context is defined by its strong pro-EU stance. Since 2012 the lowest support of EU orientation was 61% in 2015 and the highest was 83% in 2018. For most of the period between 2012 – 2019 the approval of the EU membership perspective were above 70% (Thornton and Turmanidze, 2016, 2019). Furthermore, 45% and 66% expressed their preference for the EU in 2015 and 2019 respectively, while preference for Russia expressed 30% in 2015 and 21% in 2019 (Thornton and Turmanidze, 2019). This is

influenced by the secessionists conflict in Abkhazia and South Ossetia and the 2008 military intervention of Russia in their support. As a consequence of these developments does not have sovereign control of its full territory, while the strategy of creeping borderisation has further reinforced the sense of lack of effective control as the border has approached key infrastructure. The occupation was accompanied by the effective trade ban of Georgian imports in Russia, and by deportations of Georgian citizens from Russia. The economic effects of these measures overlapped with the 2009 economic recession and reinforced the anti-Russian pre-disposition.

In this context Georgia has been “pushing ahead unilaterally over the years since the Rose Revolution of 2003 with a radical economic liberalisation and reform agenda” (Bolkvadze, 2016; Emerson and Kovridze, 2016: 2), which is linked with its pro-EU identity. Georgia has adopted more advanced reforms in order to be perceived as a real democracy, member of the EU club and contribute to its EU membership. In this process of identity definition, Georgians invoke their belonging to the European democratic tradition from the beginning of the state’s history. In addition, this strategy is used as a method of differentiation from other countries in the region, seen as authoritarian (Belarus) or more orientalist (Armenia). The historical links with the European democratic tradition, and the democratic reforms are underscored as a way to differentiate Georgia in the Eastern Partnership. In terms of state and identity survival the EU association/membership is perceived as the only viable possibility, due to its tradition of respect to diversity and possibility of independent development. The European choice of Georgia is perceived as the only possible choice for independent and autonomous national identity (Interviews 17, 18 and 44).

This Georgian identity is sustained also in opposition to Russia, which is presented as an occupier and invader of the country. Russia is seen as a threat to the national identity of Georgia and to the territorial integrity. The shared history of Russia and Georgia, as well as the example of other ethnic and national groups included in Russia (in the past and the current Federation) shows that consistent uniformization of identities is promoted throughout the centuries at the cost of differentiated national identity. These are some of the elements of national identity justification pointed out by interviewees (Interviews 17, 18 and 44).

These identity positions are characteristic of the UNM party definitions. On the other side, the change of power from the UNM to the GD-DG coalition in 2012 has clearly benefited Georgia’s relations with Russia. The GD-DG supports certain normalization of the relations with the Russian government. This division of the society and the elite is a key feature of the current political competition. The 2008 war with Russia constitutes a critical juncture that defines clearly Georgia’s social orientations and party competition in the present. The adoption

of a more moderate discourse by GD-DG government focusing on normalisation of the relations with Russia was essential for the opening of Russia's market for Georgia's product which took place in 2013 and which contributed to improved economic growth.

In conclusion, the key contextual factors that influenced the Rule of Law in Georgia, include the public acknowledgement of the need to reform this field, due to human rights violations, lack of independence and reduced the social thrust. This situation was reinforced by the economic crisis, and the grievances of the Russia's negative policies after the 2008 war. Furthermore, a political culture of conflict undermines the possibility for constructive dialogue. However, broad electoral coalitions reinforced by civil society activism is observed both in the 'transfer of power in 2003 and in 2012.

#### ***IV. PARTICIPATION AND COMPETITION***

This chapter claims that the trends of political competition and participation in the reform processes and in the institutional functioning are an essential variable that explains their outcomes. Several trends have been observed in this respect. Firstly, the analysis of the interparty competition of the GD-DG government follows similar trend as the one devised in the UNM period. For the elections and during the first years of the government, the coalition partners remained united. However, once the GD-DG/UNM consolidated its power positions, the other political parties were dismissed or left the coalition. The leader of the Free Democrats party and Defence Minister, Irakli Alasania, was discouraged by Ivanishvili to run for President and later he resigned as he faced judicial investigations in at the beginning of the GD-DG government. Two more ministers from the Free Democrats resigned together with the Alasania and the party had left the coalition. Given the close relations of Alasania with NATO, this led to his affirmation that in this way the "Euro-Atlantic" choice of the country is put under question. In the meanwhile, US representatives in Georgia expressed concerns, due to the apparent use of Judiciary and Prosecution for party purposes. The collaboration with the Republican party, the second important coalition partner was discontinued before the parliamentary elections in 2016. Key constitutional and legal experts of the Republican party had taken key role, as the Vakhtang Khmaladze (Chair of the Legal Committee in the Parliament) and David Usupashvili (Parliamentary Chairman). However, Ivanishvili dismissed this collaboration before the 2016 elections. Therefore, the dynamics of competition in Georgia reflected the continuation of the trend observed during Saakashvili's government of low fractionalization of the party system during and after the change of power.

The second trend observed in the analysis of the reform process in the Judiciary is the adoption of greater responsibility in the decision-making by judicial actors at the expense of more political actors from the legislative. This shift took place as a result of the institutional resistance of the Judiciary during the Third Wave of reforms. The access of civil society organisations to the decision-making processes was also reduced in comparison to the first years of GD-DG government. The relations between executive, legislative majority and civil society organisation is defined increased confrontation. In addition, political competition was defined by the dismissal of diverging groups and centralisation within the ruling party. A clear trend towards reduced participation and competition, is accompanied by increased confrontation and polarisation, which contribute for reduced legitimacy of the Judiciary.

The protracted progress of the judicial reform indicates a complicated balance between costs and benefits of the reforms for the judiciary, executive and legislative. In addition, the dissenting opinions of legislative representatives in the HCJ have significantly reduced and almost completely disappeared with only two non-judge members still expressing dissenting opinions. Furthermore, the slow progress of the reform processes in accordance with the RoL standards is an indication of the prioritisation of cost-benefit considerations above norm resonance, as the norm adoption and implementation illustrate.

The reform process in terms of social participation has shifted from initial cooperation and greater openness towards opposition, politicization and even open conflict with civil society organisations involved in the field of Rule of Law. CSO reported that the selection of key figures as the Independent Inspector and the Head of Management Department were non-transparent. The involvement of CSO in the reform processes has also significantly declined. The elaboration of the 2017 – 2020 Judicial Reform Strategy involved both CSOs and international actors, who had the chance to make a significant contribution. However, it was reported that before the strategy was adopted, judges successfully insisted on changing the provisions on the election of the Court Chairpersons by the judges.

Civil society involvement in the Working Groups in charge of the implementation of this strategy was subject to ad hoc invitation and/or approval, which is a clear deterioration in comparison to the previous Strategy (2012 - 2016). CSO had to apply every time in order to attend a Working Group meeting. CSO reported that the Council ignores CSO statements or “perceives them as ‘attacks’ on the judiciary” (Mkhatvari, Kukava and Talakhadze, 2018: 15). Interestingly, the discursive strategy used by representatives of the judiciary and the executive, when stating that CSO aim to influence the independent development of the Judiciary and have personalist political goals against the government and the judiciary.

In order to illustrate to what extent, the change from the Criminal Reform Strategy (2012-2016) to the Justice Reform Strategy (2017-2020) has influenced the (Dis)continuity of the elite involved in the reform processes, network analysis has been developed. For this purpose, two affiliation networks have been created based on the biographical data of individuals involved in the implementation the Criminal Justice Reform Strategy (2012 – 2016) and the individuals involved in the drafting of the Comprehensive Justice Reform Strategy (2017 – 2020), showing the background of the individuals involved in these processes. Figure 9 and Figure 10 below show the connections between individuals (marked with numbers) and organisations based on the data collected. This information is used to illustrate to what degree the change of strategy has influenced the composition of the Working groups in charge of drafting and implementation. The size of the circle illustrates the relative weight of the institution or individual based on the number connections it has to others.

The information provided by civil society organisations that since 2017 the opportunities for their involvement has significantly decreased was confirmed by the network analysis performed. The Figure 9 shows that civil society organisations were much more represented in the period before 2017 than at a later stage as the Figure 10 shows. In addition, the affiliation networks (in Figure 9 and Figure 10 below) show that there is a clear difference between the variety and breadth of the composition of the two networks. Figure 9 (2012 - 2016) includes a wide variety of individuals that have affiliation with different private and public institutions, while Figure 10 (2017 – 2020) shows a smaller network which is much more focused on the Judicial actors.

It is important to note that the Figure 10 is based on the Working Group which drafted the Strategy, while the Figure 9 based on the Working group in charge of the implementation of this Strategy. Therefore, it would be expected that the Figure 9 focusing on the implementation would involve more technical and executive cadres, while the affiliation network shows the opposite trend. This is even more pronounced when compared to Figure 10, which focused on the drafting process of the strategy and would therefore, be expected to involve a variety of civil society and legislative actors. However, these expectations are not met, as Figure 10 is defined by much more limited involvement of CSO and legislative actors. Consequently, it is possible to conclude that the 2015 judicial resistance against the reforms and the subsequent negotiation between the executive and the judiciary in the period 2015-2017 has led to a reinforcement of the role of the Judicial actors at the expense of representatives of the legislative, CSO and lawyers in private practice. If judicial actors seem to be dominant in both cases, in the case of Figure 10 they are overrepresented.

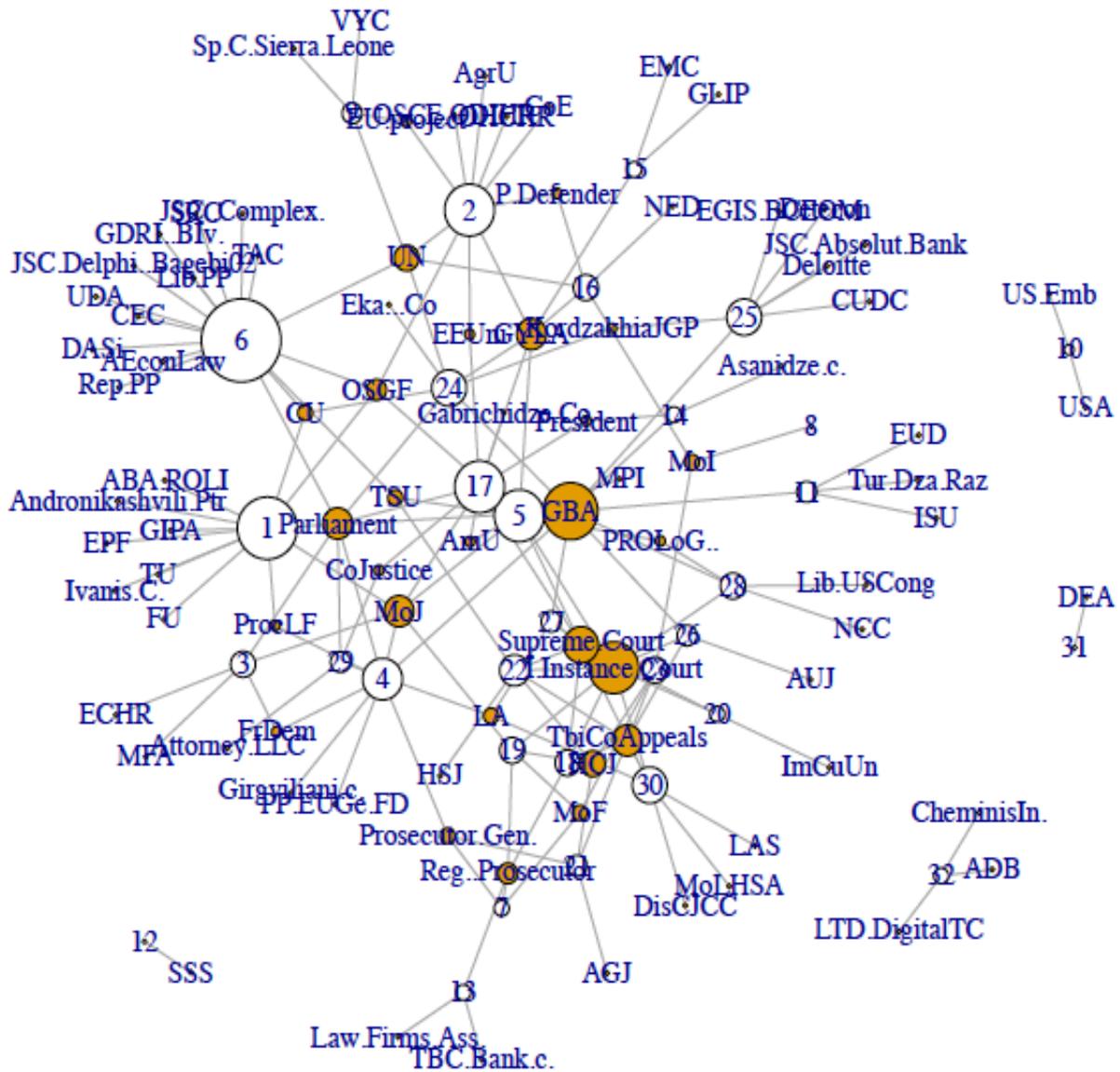


Figure 9. Affiliation network of two Working Groups (random case allocation and Prosecution reform) in charge of the implementation of the Criminal Justice Reform Strategy (2012 – 2016)

In addition, a closer analysis of the networks indicates that the influence of individuals connected with the Prosecution service (General Prosecutor’s Office and Regional Prosecutor Offices) has increased in Figure 10 in comparison to Figure 9. This trend represents certain counterintuitive features, as in Figure 9 (Reforms 2012 - 2017) individuals affiliated with the Prosecution have been involved, due to the focus of one of the Working Groups on Prosecution. On the other hand, the increased presence of Prosecutors in Figure 10 indicates the involvement of a high number of individuals that have started their careers as members of the Prosecution and have subsequently continued working in the Judiciary. This is so, because the focus of the Working Group constitutive of Figure 10 is strictly limited to the Judicial reform, as another Anticorruption working group was focusing on the reform in the Prosecution Service.



CRICC = legislative + Executive + CSO + Judiciary	CRICC = legislative + Executive + CSO + Judiciary	CRICC = legislative + Executive + CSO + Judiciary (SC Ch)	Judiciary Executive (-SC Ch)	Parliament Executive Judiciary(-SC Ch)	Judiciary
<b>First wave</b>	<b>Second wave</b>	<b>Third wave initiation</b>	<b>Judicial resistance and negotiation</b>	<b>Third wave – adoption implementation</b>	<b>Forth wave</b>
<b>(2012 – 2013)</b>	<b>(2013 -2014)</b>	<b>(2015)</b>	<b>(2015-2017)</b>	<b>(2017)</b>	<b>(2017 - 2020)</b>
-Constitution 2010 -Depoliticization HJ -Transparency court proceedings -Conference of Judges role (Discipli. +Pr. HJ) -Independence Disciplinary Board	- <b>3-year probatory period</b> - Supreme Court Qualification Chamber for appeals - Regulation of Jury trials postponed	-Inspectorate -Management Department -Disciplinary responsibility -(deputy) chairpersons - probation periods for current judges	-Early termination of powers of chairpersons and new selection procedure -Inspectorate -Management Department	<b>Repoliticization HJ (Parliament. Vote + Chairper)</b> -delay of the random case distribution system <b>-(deputy) the Court Presidents</b> -2 selection procedures	-Inspectorate -Management Department -Random Case allocation with <b>Chairpersons’ role retained</b> <b>-disciplinary proceedings (improper fulfilment of duty HJ)</b>

Figure 11. Summary of the Reform Waves in Georgia, the actors involved and their outcome.

Similar dynamics were observed in the normal functioning and institutional selection of the Judiciary after 2017. For instance, the political representation of the opposition in Judicial institutions was reduced. In 2016 the Rules of Procedure of the Parliament were changed in order to abolish the requirement for the election with a qualified majority of one of the five Parliamentary nominees for HJ members. After this change all five parliamentary HJ nominees were elected with simple majority. It is important that the HJ had been operating with only 14 instead of 15 members for four years, due the impossibility to comply with this requirement (Nozadze *et al.*, 2017; Emerson and Kovziridze, 2018; Nozadze and Shermadini, 2018). In this way the opposition was not represented in the processes taking place in the HJ.

On the other hand, the regulation of the transparency and integrity of the HJ decision-making processes was reinforced with the requirement to publish the agendas of its meetings 7 days in advance. According to CSOs reports, however, this legislative measure has not been fully implemented, as in 2017 for example agendas were published 2-3 or even the day before the meeting on certain occasions. A positive change was the publication of HJ sessions on its website (Nozadze and Shermadini, 2018).

Importantly, civil society organisations play a very important role in the reforms in the field of Rule of Law. CSO supported the restoration of the negotiation between the parliament, executive and judiciary in 2017. After the delay between 2015 and 2017 of the legislative amendment of the Third Wave of reforms, they refused “to present their report and [demanded]

the creation of a parliamentary forum to discuss the developments and prompt reforms” (Mkhatvari, Kukava and Talakhadze, 2018: 15). In this way civil society actors insisted on the formalisation of the political negotiations and of bringing them to the transparent institutional channels for their discussion – the parliament.

Georgian civil society has an important role as it consolidated a common platform in Rule of Law. The Coalition for Independent and Transparent Judiciary (CITJ) was established in 2011 with the support of a USAID project (CITJ, 2011; Interview39). This differential empowerment by USAID played a key role for domestic participation and transparency. At the initial stages of the reform, in 2012 the CITJ issued a report identifying the weaknesses in the Judiciary, as the “unreasonable limitations placed on rights of judges; politicized HCJ, too much power in the hands of court presidents, uncontrollable leverage for influencing judges, including assignment of a judge and disciplinary proceeding” (Verdzeuli, 2012).

Lastly, regarding the reform process of the Prosecution it is important that the two first reading of the draft law were voted in the Parliament and mainly domestic CSO and political parties provided opinion. Reportedly, these domestic criticism (which was based on past international recommendations and best practices) were not considered by the working group on the draft law, as “it has postponed the revision [...] to the time of publication of the opinion of the Venice Commission” (IDFI, 2018d, Interview 38). In this case, international accountability partially replaced domestic processes of participation and consensus-building.

Furthermore, the trends of participation in the ordinary processes of the Prosecution present much more limited access to information and civil society involvement. The attendance of CSO needs to be approved by all members of the Prosecutorial Council. In the past there were occasions when permission was not granted (Interview 43). This trend contrasts with the broader involvement of CSO in the Judiciary where the permanent pressure on specific issues seems to increase the transparency of the system (Interview 38). Alternative suggestions provided by CSO include the need to separate the investigation in an independent way from the Prosecution (Interview 41). Other opposition parties assessed negatively that the Prosecutor General can be removed only with an impeachment procedure (Interview 30). Furthermore, members of the opposition criticised the limited institution of the institution, as some consider that the political responsibility under the Ministry of Justice is a better model (Interview 43).

The case of the Prosecution reform clearly illustrates the way in which the normative discourses of the Venice Commission, the EU and civil society organisation reinforce one other. Domestic CSO indicated that their limited capacity to influence the direction in which the reforms evolve in the case of the Prosecution Office (Interview 41). They use as a support

of their arguments the expert opinion of international actors as the EU, Venice Commission, OECD or GRECO. This strategy further legitimises their positions (IDFI, 2019). International actors provide funding for advocacy to CSO, which leads to their differential empowerment.

#### ***V. INTERNATIONAL FACTORS***

The influence of international actors on the Rule of Law reforms in the period are linked mainly with the EU Association Agreement (AA), which was signed in June 2014 and ratified in 2016. The AA develops in more explicit and detailed way the political relationship as the application of EU values as democracy and Rule of Law. Between 2012 – 2014, the judicial and prosecution reforms were supported by the European Neighbourhood Policy (ENP) Action Plan, which defined the Rule of Law as Priority area N° 1 with special focus on the “reform of the judicial and penitentiary systems” (European Union, 2004: 2). A Sector Policy Support Programme provided 18 million Euros between 2012 and 2016. It focused on the support of the implementation of five of the eleven chapters included in the Criminal Justice Reform Strategy and more specifically Juvenile Justice, Penitentiary, Probation, Legal Aid Service and the Office of the Public Defender (European Commission, 2011a).

In June 2012 the EU introduced the Eastern Partnership Integration and Cooperation Programme (EaPIC), which aimed to support the institutional development in Eastern European countries, “with a view to accelerating their political association and economic integration with the EU” (European Commission, 2012: 1). The EaPIC applied the “more for more” principle, which implied that those countries that show positive “assessment of the country’s progress towards deep democracy” will benefit from additional economic support for institution-building (European Commission, 2012b). As a result of its successful reforms in the period 2012 – 2014, Georgia received additional allocation of 22 million Euros for the reforms in Justice, migration and border management. On the same basis, in 2013 it received an allocation of 27 million Euros for the improvement of the “job market management and the offer of vocational education and training” (European Commission, 2013a).

In addition, the Visa Liberalisation Action Plan (VLAP) was “handed over to Georgia [by the EU] on 25 February 2013”, as a first step in the negotiation of a visa free regime. These contractual agreements are considered as key incentives in support of the reform processes. The social and electoral support for these agreements is instrumental for the advancement of the reforms (Bolkvadze, 2016; Interview 27). Therefore, the increased funding for justice and democracy reforms, and the negotiation of AA/DCFTA and VLAP represent significant

incentives offered by the EU between 2012-2015. The positive direction in which the reforms progressed during this period confirm the important role such incentives played.

In addition, the reform processes were monitored on annual basis. The 2013 ENP monitoring report noted that the reform of the Prosecution “needs to be accompanied by oversight mechanisms, increased transparency and accountability to restore damaged public trust in prosecutors’ work” (European Commission and HR, 2014: 8). Furthermore, the EU reflected also that “many prosecutors were forcefully dismissed since 2012, some of them denounced by citizens in their complaints” (European Commission and HR, 2014: 7). The deputies Prosecutor General were also replaced as part of this process. The high turnover with the change of government is an indication of the close links with the executive. The 2014 ENP Monitoring report noted that “the status of the prosecution service is one of the most urgent issues to be decided” by the institutional reforms (European Commission and HR, 2015: 2).

In spite of this negative feedback, the Association Agreement was signed in 2014. The AA represents both normative and rational choice features, as it includes specific conditionality for the reforms. In Judiciary, these conditions are the “development of a Judicial Reform Strategy and Action Plan with clear benchmarks and priorities, including [...] adequate resources”, “strengthening the independence, efficiency, impartiality and professionalism of the judiciary”, “ensuring the right to fair trial [...], independent and effective investigation, [...] making plea bargain compliant with [CoE] standards and practices” (Republic of Georgia and European Commission, 2014: 4). On the Prosecution, it notes the need to “implement the Prosecutor's Office reform following the 2013 amendment [...], identify proper constitutional setting for the Prosecutor's Office with effective oversight [...] establish a truly professional Prosecution service [...] independent from political party or other undue influence; ensure that criminal prosecutions are conducted in a transparent and impartial manner, free of political motivation” (Republic of Georgia and European Commission, 2014: 4).

Importantly, in the case of the Prosecution the incentives provided by the EU were explicitly mentioned in the Venice Commission report, as the compliance with this goal (the Anti-Corruption Strategy) was linked to the Visa Liberalisation Agreement. The VLAP included two benchmarks for assessing the progress in the field of anti-corruption. One benchmark focuses on the legislative and policy framework “containing, within a clear timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources, [...] aiming notably at ensuring the independence, efficiency, empowerment and accountability [...] ensuring a sound legal and institutional framework, including necessary secondary legislation for an efficient functioning of internal control

mechanisms [...and...] follow-up of GRECO recommendations”(European Commission and the Republic of Georgia, 2014: 9). The second benchmark focused on the “effective implementation of the legal framework [...], ensuring the independence and efficient functioning of anti-corruption bodies, [...] ensuring and maintaining a convincing track record of corruption cases (from prosecution to final court decisions), including corruption in high level” (European Commission and the Republic of Georgia, 2014: 10). However, the VLAP did not contain specific instructions for assessing the compliance with these benchmarks. It is possible to argue that the explicit mention of the VLAP by the Venice Commission provides clear guidelines for complying with the requirements regarding the Prosecution Office.

As a consequence of the Venice Commission Opinion and the EU incentives, the government made changes in the law adopted in September 2015. In spite of these changes, the Venice Commission concluded that “the procedure for appointment of Chief Prosecutor is still not fully balanced and that the “political element still remains predominant”, due to the significant involvement of the parliamentary majority (Venice Commission, 2015b: 7). The inclusion of the Council of Prosecutors in the Ministry of Justice and the Minister membership, continued the risk of politicisation of the Prosecution system (Venice Commission, 2015d).

In spite of this negative opinion, the last VLAP monitoring report from December 2015 considered as fulfilled its benchmarks as the new Anti-Corruption Strategy and Action Plan was approved and it “includes all relevant components: strategic priority, results”, indicators, activities with targets, deadlines, responsible agencies, risks and budget (European Commission, 2015a). On the other hand, the Association reports for the same period acknowledged the amendments which led to creation of the Prosecutorial Council and adds that “the transparency in the appointment, evaluation, transfer and promotion of prosecutors as well as the correct implementation of existing disciplinary procedures and ethical standards” and “the creation of investigative body for dealing with prosecutors misconduct remain to be addressed” (European Commission and High Representative of the European Union, 2016: 3).

This difference in the conclusions of the VLAP and the association report illustrates the challenges in the Rule of Law reforms. The adoption of legal and policy acts, and the creation of institutions does not provide sufficient guarantees for effective reforms. Furthermore, the VLAP was considered a short-term instrument which provided clear and credible incentives, while the AA is a long-term instrument. In addition, the government of Georgia argued that this was “only the first phase of a comprehensive reform [...and...] the second phase is underway” (Venice Commission, 2015a: 5). This argumentation proves additionally the protracted features of the reform and confirms the need of credible long-term incentives the

processes of domestic change. The VLAP proved to be helpful in this sense, but it is questionable to what degree the AA provide long-term incentives for effective RoL reforms.

In addition, the Prosecutorial Council role as guarantee does not meet its actual role, as it does not have a say in the removal of Prosecutor General. Furthermore, the only controlling power it has is the one to “conduct disciplinary proceedings against the First Deputy and the Deputies of the Prosecutor General”, and the power to submit reports and recommendations (Venice Commission, 2018: 7-8). CSO and the Venice Commission criticised that the Prosecutor General “has full discretion on the careers of Prosecutors”, while the Council does not have a say (Venice Commission, 2018: 9). The composition of the Council “does not sufficiently enhance public credibility of independence” (Venice Commission, 2018: 9).

In spite of this negative assessment of the Prosecution reform, the progress towards the AA goals led the EU to increase the economic incentives. In May 2015, the Budgetary Support to the Justice Sector Reform Programme was agreed. It reaches 50 million Euros, of which 30 million Euros are disbursed in tranches directly in the state budget and the rest (20 million Euros) are distributed among smaller service-provision contracts. Following the prioritisation of the previous sectoral budget support, it focused on the Legal Aid Service, Juvenile Justice, Penitentiary/probation. Two new fields have been added however – Land registration and Prosecution. Apart from the support of the Legal Aid Service, no specific focus is provided to other judicial institutions. In addition, it is important that the Budget Supports funds provided by the EU are not earmarked, which means that there are no conditions on what the money are spent, and it is not checked. Furthermore, there are no specific indicators that measure the progress in the Judiciary, because the government should not commit to the reforms in the judiciary, which is independent (Interview 36). The use of impact-based indicators on aspects as Judicial independence by international actors is very difficult, due to the need for such organisations not to influence domestic developments of sovereign states. Consequently, disbursements have been blocked only in cases of very flagrant violations of the principle of impartiality (see Moldova) or when indicators (as adoption of law or strategy) are not fulfilled. This limitation explains the use of differential empowerment provided to domestic actors.

In the case of the Prosecution Office, the successive disbursements of the Budget Support are linked to specific indicator, which present similar challenges. Several indicators refer to adoption of law, of strategy, while others focus on the budgetary provision for specific institutions or the creation of certain institutions or departments. Usually they are defined as “Prosecutorial Council – composed in a balanced way” without any operative instructions.

More specific are the indicators that link the goal of impartiality with previous recommendation of the Council of Europe (European Union and Republic of Georgia, 2014a).

The normative-based external support in the field of Rule of Law of the EU is based on several elements. Firstly, this is the use of socialization instruments as training. Secondly, monitoring and assessment mechanism as the reports of the Venice Commission, GRECO of the Council of Europe are a key pillar on which the EU bases its normative authority. The voluntary character of these mechanisms together with the authority of their technical recommendations of best institutional practices provides significant legitimacy and credibility to the EU normative recommendations. In addition, the EU continued issuing annual progress that assessed the development of the Judicial reforms.

In addition, the normative-based external support through socialization or discursive action (International Variable 2) was reinforced by “the appointment of the EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia”, who supported the power transition and the accompanying it reform processes in the country (European Commission and HR, 2014: 8). In 2013 the Special Advisor issued a report “Georgia in Transition” in which he discussed the general direction of the reform processes in the country (Hammarberg, 2013).

The ENP progress reports for 2013 and 2014 reflected the progress in the reform of the judiciary during the first and second wave of the Judicial reforms. The positive effects of the “adoption of the law on common courts and the selection of the members of the [HCJ] under new rules that increase transparency and lessen the scope of political interference” were reflected in the 2013 ENP report (European Commission and HR, 2014: 6). The 2014 progress report reflected the reforms in the law on common courts as they were described above, including the introduction of the Qualification Chamber to the Supreme Court. In line with the Council of Europe recommendation, the EU recognized the adoption of the criteria of good faith and competence for the life-time appointment of judges, but also criticized as “problematic” the three-year probation period for judges and adds that “[i]n general, judicial independence remained fragile” (European Commission for Democracy through Law, 2014; European Commission and HR, 2015: 2). In addition, both in 2012 and 2013, the ENP monitoring report acknowledged that “Georgia continued to make progress in fighting corruption, more needs to be done to prevent, detect and tackle high-level corruption” (European Commission and HR, 2013, 2014: 8).

These less critical assessments contrast with the very critical statement on the selection of the Supreme Court judges in 2019. On this occasion, the EU pointed that the selection procedure “was characterised by key shortcomings, including a lack of transparency that

undermines a genuinely merit-based nomination process”. Furthermore, it pointed that “the highest standards of ethics and integrity [...] remains key [...] for the advancement of the EU-Georgia agenda” (European External Action Service, 2019). However, this negative assessment did not lead to any change of the governmental course of action, as it required the revision of the procedure before any future appointments.

Such critical statements are issued after prior politicisation and media attention. Therefore, external actors influence also depends on the level of policy transparency, domestic competition and social participation. In addition, the EU exerts informal influence on policymakers through regular meetings where the prioritisation of the reforms is discussed. In this sense the lobbying efforts of different domestic actors as political parties (linked to the European Parliament and European Political families) and CSO (to EU Commission, External Action Service and the EP) prove to be essential for information gathering and normative promotion on the side of the EU (Interviews 41, 38, 26, 34). The EU and other international actors provide project funding for institutional strengthening, and research to a broad range of civil society organisations. Specific instruments as the European Endowment of Democracy (EED) support new political movements contributes for domestic competition and participation. Therefore, it is possible to conclude that differential empowerment (through argumentative and economic support) of domestic social and political actors is an important instrument for exerting influence in the field of democracy and Rule of Law by the EU.

The European Parliament also plays an important role in terms of normative discursive action regarding domestic developments. For instance, in its regular resolution produced in the framework of the Report on the Implementation of the Association Agreement the European Parliament (EP) provides an assessment of the progress of the reforms and of the general situation in the country. These recommendations reflect the support for the positions of certain domestic actors, while delegitimise other positions. For instance, in its 2018 Resolution the EP highlighted “that high-level corruption remains a serious issue” (European Parliament, 2018: 3) and this issue has been used as an important argumentative support by domestic opposition and CSO critical to the corruption and to the RoL reforms in the country (Interviews 19, 34, 26). On the other side, opposition indicate that the EU is not critical enough, that in order to achieve reforms it has to go beyond the technical aspects or the screening and focus on the political aspects of the reform. It has been also used the argument that the EU needs to point to Georgia as a success story in the region and that it is afraid that Georgia might change its geopolitical alignment towards Russia if the EU pushes it too hard for achieving reforms (Interview 28). From this discursive perspective, the EP is seen as a more critical actor, due

partially to pointing out the high-level corruption in the country. On the other side, however, Georgia's commitment with EU values is seen as a very valued aspect by the EU institutions and it is acknowledged as such by them (Agenda.ge, 2018a).

In conclusion, during the first and second wave of the Judicial reform in Georgia, the EU provided substantial normative and incentive-based support for the reform processes in the country. The important economic resources were expanded based on the more-for-more principle, while a Special Adviser accompanied the processes in addition to the regular normative reporting of the EU. Furthermore, it is interesting the AA/DCFTA and VLAP were negotiated in the period providing higher social support to the government. This support provided by the EU, however, contrasts with the general criticism of the state of the Judiciary in Georgia reflected in the 2014 ENP report, which reflected the fragility of the judicial independence in Georgia.

The preferential fit of domestic actors defines the protracted reform process in spite of normative support and incentives provided by international actors. On the other side, it appears that the provision of short-term incentives as the VLAP were successful until incentives were provided, while the long-term incentives as the AA did not reach such a successful outcome. Negative conditionality in the case of Georgia has not been used to such a large extent as in the case of Moldova. Domestic actors recognise the role of international institutions and more specifically to the VLAP and AA, different strategies have been adopted, "but in practice we don't see other developments" (Interview 38). The strategic documents included in the VLAP were successfully adopted, but the AA and Venice Commission recommendations were not as effective in influencing the effective independence of the Prosecution Office. Furthermore, the EU institutions (European Commission and Parliament) provide discursive support through annual assessments of the reforms. Funding opportunities, (informal) meetings and official statements serve for differential empowerment to domestic actors. In this way the EU supports domestic competition and participation as essential elements of the reform processes.

## ***VI. CONCLUSIONS. IMPLICATIONS FOR FREEDOM AND EQUALITY***

The protracted character of the Judicial reform in Georgia indicate that the main asset for the governing elite is the control of key institutional positions. The reform dynamics between judicial, executive and legislative powers clearly reflect the cost-benefit analysis of the competing groups, which in most cases translates in the control of key institutional positions. Consequently, the following actions indicate that the main concern of the political and judicial actors is to guarantee their exclusive access to key nominations rather than to guarantee

representative and impartial Judicial and Prosecution. The 3-year probation period prior to lifetime nomination remained an essential element of the judicial career, in spite of the repeated criticism of international and domestic actors, including the EU, the CoE. Secondly, the 14/15 HCJ members in 2012 were Court Chairpersons that were replaced at the beginning of GD-DG government, which changed this rule. Interestingly, this rule was reversed in 2017 after the Judiciary currently the functions and nomination of Chairpersons remain similar to the ones in 2012. These dynamics together with the highly politicised and non-transparent nomination of a majority of Supreme Court judges in 2019, illustrate to what degree institutional and political actors aim to retain control of key institutional positions as a power asset.

In addition, domestic elite struggles to retain its control of the selection and career development of key positions in RoL institutional framework. In the case of the Judiciary institutional resistance to change is the main challenge for democratic deepening, which led to informal negotiations, reduced transparency and limited participation. In the case of the Prosecution reform, the lack of political will on the side of the government leads to fake compliance with the adoption of strategic documents, which however do not lead to institutional transformation. Despite these negative aspects, the reform introduced certain progress in terms of institutional development, as the reduction of acquittals and the judicial practice to “passively and routinely approve” plea bargains (Article 42 of the Constitution *et al.*, 2015: 19; Interview 24). This positive change is a product of the “change in state policy” (Article 42 of the Constitution *et al.*, 2015: 19). The legislative amendments have increased the rights of appeal and of the defendants in plea bargain agreement. These improvements affect positively the equality of citizens’ when they deal with the state Rule of Law apparatus.

The trends of competition and participation affect the Rule of Law reform processes. The Prosecution reform presents greater challenges, due to the lack of transparency and of effective possibility of the opposition to influence the reform processes. These difficulties are also linked to its hierarchical integration in the executive during the previous government. In contrast, Georgian Judicial reform is defined by strong and even polarised political competition. The network analysis performed in this chapter was key for illustrating the process of limitation of the access and involvement of legislative, political, and civil society actors. The comparison between the affiliation networks of the reform commissions in 2012 - 2016 and in 2017 clearly confirm this dynamic. The two working groups established for the period 2012 - 2016 for the implementation of the Prosecution and random case allocation included more members with political and legislative background, and representatives of civil society

organisation. On the other hand, the more strategic group set up in 2017 for drafting the new reform strategy gathered more technical and judicial cadres. Importantly, many members of the second Commission had a background in the Prosecution service, which in Georgia is related with the culture of obedience and hierarchical dependence on the executive.

In summary, the members of the more technical groups have a predominantly political background (2012-2016), while the more strategic group formed in 2017 is dominated by technical and judicial cadres. Therefore, the affiliation networks show a clear change of approach towards the reform process in Georgia, which came as a consequence of the opposition of the Judiciary that led to the reversal of some of the measures planned. This more limited participation in the reform process has led to the polarisation and politicisation of the relation between the government and the opposition, and civil society. In addition, the possibility for judges to express diverging opinions within the Judiciary is also more limited.

This reduced transparency, social and political involvement and informal trends of negotiation outside the official institutional platforms since 2015 affect negatively the reforms in terms of democratic equality. Therefore, unequal access to institutional processes can be interpreted as democratic weakening both in terms of representativeness and impartiality of judicial institutions. In addition, the instrumental use and power concentration in certain judicial structures influences negatively the professional independence and impartiality of the Magistracy and consequently citizens' equality. This inequality is reinforced by the concentration of power in the executive and the governing political to nominate key figures in the Judiciary. This dynamic reinforces the conflictual policy-making, isolation of the opposition and civil society, which may lead to complete replacement of the individuals on key Judicial and Prosecution positions after the change of government. In this sense, it is important that many of the members of the Supreme Court were replaced by a highly politicised procedure, developed in spite of the opposition of the EU and the Venice Commission.

In addition, the negative consequences of the lack of equal access to institutional decision-making process and importantly nominations can be reinforced if there is additional power concentration resulting from the rules of electoral accountability. Therefore, the guarantees for free and fair elections are essential in this case. These developments, including the limitations imposed on domestic participation and competition by the governing elite, influences equality and fairness of the policymaking and of the institutional process. They also affected negatively the citizens' trust in state institutions, as in 2018 34% of respondents distrusted the Judges and the Prosecution office (Caucasus Research Resource Center, 2018b).

However, these limitations of political competition and social participation are less significant in the case of Georgia, given the level of consolidation of the political opposition and of civil society. The development of strong civil society coalition which focuses specifically on Rule of Law has the potential to influence significantly the reform processes, due to its high level of expertise. International organisations have supported via differential empowerment domestic actors in voicing their critical opinions. Interestingly the use of normative arguments as the need to limit any external interference in the Judiciary has been used against transparency and civil society participation in the reform process. This dynamic can be an indication of instrumental use of democratic norms for political struggles among domestic actors and/or of the low salience of these Rule of Law norm.

On the other hand, Georgia presents greater commitment to adopt reforms beyond the EU-promoted comprehensive strategy for reform in the Judiciary and anti-corruption, when compared to Armenia and Moldova. However, the presence of loopholes in the normative development has been skilfully used for non-transparent nomination processes of individuals close to governing party. The lack of overlap between the preferential fit of dominant domestic groups with EU/CoE promoted reforms, due to the potential loss of power, defines the protracted features of these reforms in spite of the economic incentives and socialisation efforts of international actors. The main arguments for dismissing of key international recommendations are that they constitute “political decisions” and that it is just the first phase of a more comprehensive reform process.

<b>Independent variable</b>	<b>Contextual propositions 2004 - 2008</b>	<b>Causal propositions 2012 - 2018</b>	<b>Outcome 2019 - 2020</b>
Secessionist conflicts State existence threatened by Russian military presence; Weaker state administration originally	<b>Centralized personalist presidential system</b> with blurring boundaries between the state and the UNM. Lack of check and balances, with dominant executive. The Prosecution is politically influenced, leading to human rights violations. High level of awareness of the violations and need of RoL reforms.	Protracted reform I wave. Depoliticisation of the HCJ judicial members; selected by parliament. Court chairs cannot be members of the HCJ >>14/15 HCJ members seized. Conference of Judges nominates the Disciplinary Board and the President of the HCJ); Independence Disciplinary Board <b>II wave.</b> 3-year probatory period. Supreme Court Qualification Chamber for appeals. Regulation of Jury trials postponed. <b>III wave.</b> Repoliticization HCJ (Parliament. Vote + Chairpersons elected); 2 selection procedures for judges.	<b>IV wave.</b> Inspectorate, Management Department established Random Case allocation with Chairpersons' role retained. The disciplinary proceedings based on improper fulfilment of duty. High politicization, lack of transparency in the 2019 nomination of a majority of Supreme Court Judges. Influence on individual independence.
Medium ethnic diversity  Political culture of conflict	<b>Political competition</b> Zero-sum relations and high polarization. Use of state resources against opposition. Incumbent governs during two mandates, low party fragmentation during and after political change.	Initial discursive resonance and salience on RoL by GD-DG. <b>Resistance of the Judiciary</b> and non-transparent negotiation with the executive 2015-2017 due to early termination of powers of chairpersons and new selection procedure; Inspectorate; Management Department . <b>Increased role of judicial actors at the expense of political actors.</b> Pressure on the Judicial union Unity of judges >> all its members left. Association of Judges dominated by the HCJ is the only union.	<b>GD-DG Intra-Party conflict on Supreme Court nominations.</b> Reduced participation and competition is identified, while confrontation, criticism and polarisation has increased. Reduced legitimacy of the Judiciary.
Former successful Rose Revolution	<b>Limited social participation in politically (UNM) Dominance of the UNM goals over the rights of the citizens. Opposition demands deep institutional reforms</b>	Politicised relations between CS and government. Domestic civil society reinforced by international actors. Strong CITJ supported by USAID. Predominant role of <b>Prosecution background in the Judicial reform after 2017</b> - culture of hierarchical obedience.	Recurrent street protests in the implementation 2019.
EaP created, AA/DCFTA negotiations	<b>Openly declared Pro-NATO and EU orientation</b>	The <b>Venice Commission/OECD criticized key aspects</b> as the role of the Ministry of Justice in the Prosecution, the 3-year probatory period, the role of the Court Chairs, the lack of disciplinary guarantees. The 2 different nomination procedures for judicial selection. <b>AA/DCFTA</b> concluded in 2014 and <b>VLAP</b> in 2012, in addition to substantial financial support for reforms based on "more-for-more" principle. <b>Focus on policy documents and difficult impact measurement</b>	Not inclusion of key recommendations of the Venice Commission, but still this reform is a step in the right direction International criticism dismissed as part of political decision,
Economic dependence on Russia until 2006	2008 Military intervention Russia in South Ossetia; Increased energy prices, trade sanctions, migrants	Russia seen as a threat to state and identity existence The GD-DG achieved normalization with Russia.	Russia opens its market for certain Georgian products after power transfer to the Georgian Dream.

Table 3. Causal mechanisms in Rule of Law reform Georgia 2012 – 2019.

## ***VI CHAPTER. MOLDOVA***

### **I. REFORM PROCESSES IN RULE OF LAW IN MOLDOVA**

The reform process analysed in the case of Moldova covers the Judicial and Prosecution reform in the period 2011- 2016, and their implementation throughout the events that took place after the 2019 parliamentary elections. For this purpose, firstly the reform processes at the domestic level are traced, followed by the contextual factors, the trends of competition and participation, and the role of international actors. Lastly, the conclusions of the chapter will analyse the reasons for the lack of advancement of effective Rule of Law reforms, as well as the consequences for citizens' freedom and equality.

This reform was initiated by the Alliance of European Integration (AEI) in 2011 after it secured the support of members of the Communist Party (PCRM) and reached the required 61 MP. The fragile coalitional agreement was based on the distribution of the different political posts in the Moldovan institutional system: Vlad Filat (Liberal Democratic Party) was elected Prime Minister, Ghiumpu (Liberal Party) – Parliamentary chair. Lupu (Democratic Party) was expected to become President, but the required support of the PCRM led to the election of the former communist Timofti as a President (Hale 2015). This allowed the AEI to pursue the goals of its coalitional agreement, which included ambitious reforms for strengthening the independence of the Judiciary, as “vital area for the true promotion of the EU integration of the country” (PLDM, PDM and PL, 2010: 2). The fourth point of the AEI coalition agreement focuses on the Rule of Law, the separation and independence of powers, and specifically of the judiciary, and the “equality of all before the law” (PLDM, PDM and PL, 2010: 2).

However, this apparently high level of resonance of the Rule of Law was not accompanied by an actual commitment to effective reforms in this field. In 2011 a secret annex to the AEI coalition agreement was disclosed, showing that the parties had also agreed on a distribution of ‘*independent*’ positions as the Prosecutor (to the Democratic Party (PDM), the Court of Auditors (to the Liberal Democratic Party (PLDM), the Center for combating economic crime and corruption (PDM) or the National Security Agency (Liberal Party (PLM), and financial-banking institutions (PLDM, PDM and PL, 2010a; Publika.MD, 2011). This informal annex to the coalitional members shows an essential contradiction to the Rule of Law principles quoted as basis of their common political programme.

Under the influence of the EU support, the AEI government adopted in June 2011 the Strategy for Justice Sector Reform for the period 2011-2015. This strategy received the consensual support of 80/101 MP in November 2011 (Parliament of Moldova, 2011; MOL15).

This vast majority indicates that it was also supported by an important part of the PCRPM, which stated that “[t]he PCRPM faction, of course, is for the reforms that must take place in the justice system, but” left concrete proposals for a later stage (Parliament of Moldova, 2011: 44-45).

The Strategy is divided in seven pillars, including Justice system, Criminal justice, and integrity of Justice factors. The Strategy identifies the low level of public trust (42% has no trust in the Judiciary) and the “quasi-general perception of the advanced of corruption in the Justice” as key reform determining factors. Furthermore, the European integration is a strategic objective of the reform process, which is “designed to ensure the creation of a system of internal security, stability and prosperity, governed by democratic values and respect for human rights and fundamental freedoms” and implement “the responsibility of external commitments in relation to the EU” (Parliament of Georgia, 2011: 6, 7). Therefore, at the strategic level the AEI government showed resonance and salience of the Rule of Law.

However, these strategic declarations contrast with the informal agreement from December 2011 on the distribution of key judicial and law enforcement positions. Therefore, it is possible to conclude that the Judicial reform is seen as instrumental for EU integration and for increasing social support. The negotiations for AA/DCFTA and VLAP are therefore important incentives that increase the political support for the AEI elite. Therefore, from this perspective the size and credibility of external incentives feed into the preferential fit calculations of the political elite in Moldova which aims to retain power and control of the institutions, while expanding its legitimacy and access to resources provided by the EU. This balance of the preferential fit shows that, when ‘fake compliance’ takes place, external incentives are instrumentally used by domestic elite for their political goals, contributing in this way for the formal advancement of reforms (at strategic level). However, it is expected that these reforms will be challenged or stalled if they threaten key power positions.

The economic support provided by the EU contributed for the progress of the reform process. According to the information provided by a member of the executive involved in the reform process, the resistance in the Judiciary and its unwillingness to change the procedures and working routines was solved by the increased resources invested both in Judicial salaries and infrastructure (Interview 80). The evolution of the reform process confirms this reasoning (Ministry of Justice Moldova, 2011). In addition, the only formal contribution of the Judiciary to the Justice Strategy referred to this exact aspect.

The regulation of the salaries was amended in 2013. As a consequence between 2013 and 2016 there was an annual increase, “including a 100% increase in 2013 and 2014” (GRECO, 2016). Before this judges in Moldova “had the lowest salary among Council of

Europe member States”, while in 2016 the annual gross salary ranged from 6042 Euros to 10 062 Euros for a Supreme Court Judge (GRECO, 2016: 27; Hriptievschi, 2017). In addition, budgetary independence was increased, as these competences were entrusted to the Supreme Council of Magistrates (SCM), which now proposes a draft budget to the Parliament and the Ministry of Justice based on the proposals of district courts. Previously, the courts would send their proposals directly to the Ministry of Justice (Boskovic, 2015). In this way the role of the SCM in the Judiciary has significantly increased.

The working groups were conformed and the Action Plan for the implementation of the Strategy was adopted in February 2012. In 2012 an important package of reforms was adopted regarding the organization of the courts, the judges’ status, the Supreme Council of Magistrates, the Supreme Court of Justice and the judges’ selection and career. Importantly, the composition of the HCM remains a weakness for the independence of Judiciary. In 2012 it was changed in order to guarantee the majority of its members are judges: eight out of twelve members are elected by the General Assembly of Judges, three members are elected by the Parliament, while the Minister of Justice, the President of the Supreme Court and the Prosecutor General are *ex officio* members of the HCM. The involvement of representatives of the executive has been criticized previously by the Council of Europe, due to the risks it entails for the independence of the SCM and its misrepresentation as an institution in charge of the Judicial self-administration (Oberto, 2011). Unfortunately, this aspect was not changed with the 2012 legal amendments. Interestingly, some domestic actors involved in the process (representatives of the executive and also CSO) support the membership of the Minister of Justice in the SCM. The reasons for this would be the judicial resistance against institutional change in the system and the increased possibilities for communication given the capacity of the Ministry of Justice to influence the judicial reform. In addition, in the period 2010-2013 the Minister did not abuse his position in the SCM (Gribincea *et al.*, 2013, MOL15). Therefore, domestic actors support the presence of a reform-oriented Minister of Justice in the SCM, due to his positive influence for transparency and the RoL promotion.

The capacities of the SCM as a self-governing body also increased, in order to include a more specific regulation of the judges’ selection, transfer and promotion, as well as a system for evaluation of judges’ performance. The Judges Selection and Career Board (JSCB) was established, but as an institution with sporadic and not remunerated nor permanent activity. Its judicial members receive a reduction of the workload, while civil society representatives receive an allowance for each meeting attended. Since March 2013 the JSCB is in charge of preparing substantiated decisions on candidates, their transfer or promotion (Boskovic, 2015).

Furthermore, the criteria for selection and promotion of judges, court presidents and vice-presidents were established by law, including a mandatory performance review. In order to unify the criteria for judges selection, those that have “work seniority status, but have not graduated the National Institute of Justice” (NIJ) have to undertake an examination before graduating from NIJ (Hriptievschi *et al.*, 2015: 8). International and domestic experts criticized this procedure and its deficient implementation, due to the duplication of competences of the JSCB assessments. This uncertainty was introduced by the SCM with the new Regulations for the operation of the JSCB. For instance, the Regulations on competitive employment of judges allows the SCM to adapt this procedure “when priority is given to candidates with relevant work seniority, or to the candidate believed to have a better discipline, higher self-motivation or higher integrity and impeccable reputation” or when it is “necessary to waive the general rule deferring the powers and competence of specific judges” (Hriptievschi *et al.*, 2015b). This regulation allows discretion in the selection of candidates, which allows for interference with the individual independence of the judges. Therefore, the legal accountability does not provide enough guarantees for the compliance with clear and fair procedure. This procedure illustrating the way in which the legal development by *independent* institutions (SCM) can condition the implementation of the reform processes leading to fake compliance

This procedure was repeatedly used by the SCM after the 2012, as it consistently disregards JSCB’s assessments without substantiation (Hriptievschi *et al.*, 2015a; GRECO, 2016). Between 2013 and 2016 social organisations and media challenged the SCM, due to the appointment and promotion of judges with integrity issues. In 2013 and 2014 at least on six occasions the SCM suggested the promotion of judges with a lower score (Hriptievschi *et al.*, 2015b). In 2015 President’ objections were overridden by the SCM on nine occasions (GRECO, 2016), Five judges were promoted to the Supreme Court by the SCM or the Parliament, in spite of the criticism of their integrity (Hriptievschi *et al.*, 2015a). This selective promotion indicates political influence on key judicial positions, threatens the individual independence of judges and risks to strengthen the “loyalty to the leadership of the system at the expense of respect of law and procedures” (Hriptievschi, 2017: 27). Like in Georgia, international and domestic actors criticized the five-year probation period, as it reinforces the culture of hierarchical obedience (GRECO, 2016). The Performance Assessment Board (PAB), the Disciplinary Board and the Judicial Inspection were established within and under the regulation of the SCM. The PAB performs evaluations of judges. CSO suggested that they should remain autonomous, in order to guarantee their independence (Gribincea *et al.*, 2013).

At the beginning of 2013 the conflict among AEI members crystallised as one of the “deepest political crisis in years” (European Commission and High Representative of the European Union, 2013: 8). Party rivalries and conflicting business interests came to the surface of public debate with mutual accusations between PLDM and PD when “Filat [PLDM] accused his allies of corruption and withdrew his Liberal Democratic Party’s support for the founding coalition agreement” (Tanas and Balmforth, 2013). After this, the PDM accused the Prime Minister Filat in corruption and he was dismissed through a non-confidence vote raised by the Communist Party and supported by the PDM (Tanas and Balmforth, 2013). In spite of this development the former Prime Minister and the PLDM still counted with broad support and presided key ministries as the Ministry of Justice. A new government presided by Iure Leanca (PLDM) was elected in May 2013 and remained in power until 2015. The new coalition was composed of 53 deputies (31 liberal democrats from PLDM, 15 democrats (PD) and 7 liberals (PL)) (Barbăroşie, 2013). In 2013 non-confidence vote and 2014 nomination of Lupu from the PDM as Parliamentary chairman, the PCRM was an “ally of convenience” (H. Hale, 2015a).

The reform processes between 2013 - 2015 focused on the Judiciary and integrity. Due to the disagreements among coalitional partners, the government adopted significantly more laws by emergency procedure, which opened the possibility for a no-confidence vote. Between July and September 2014 18 such laws were adopted, including “lifting the immunity of judges for charges of money laundering and illicit enrichment; a law on the disciplinary responsibility of judges; a law on improving instruments to fight money laundering” (Litra, 2016). According to the government, this emergency procedure was used, due to the “stalemate in the parliamentary Commission on Economy, Budget and Finance”, (Litra, 2016). This procedure led to power concentrated in the executive and limited accountability. In this period the government adopted a package of amendments on disciplinary process in the judiciary regulating integrity checks, “judges’ communication with third parties and penalties for corruption” (European Commission and High Representative of the European Union, 2014: 8). Additional prerogatives were granted to the Judicial Inspection and the Disciplinary Board, via an emergency procedure. Furthermore, the recommendations given by the Venice Commission were not reflected in the final version of the law (GRECO, 2016).

Among the positively assessed improvement of this legislative amendment was the list of disciplinary offences, additional sanctions, “extension of the statute of limitation of two years” and the increased participation of judicial members in the Disciplinary Board (GRECO, 2016: 33). On the other side, the regulation on disciplinary proceedings was criticised due to its cumbersome procedure, “whereby a disciplinary complaint can be examined by five bodies

[JI, Admissibility Panel and the Plenary of the DB, SCM and the Supreme Court] – each, at one stage or another having the power to annul the decision” of the previous body (Hriptievschi, 2017: 29). The impartiality of the members of the Disciplinary Board was also questioned, as it adopts a double role of judge and prosecutor (Boskovic, 2015). These features of the disciplinary proceeding led to significant decrease in instituting disciplinary proceedings (27% less in 2017), and in the rate of sanctions (four times less and 72% of all complaints filed in 2015) (Hriptievschi, 2017: 29). In addition, as the Venice Commission reported the certain disciplinary offences (as “intentional application, or application with bad faith, or repeated negligence of legislation contrary to uniform judicial practice”) are not precise and “could be detrimental to judicial independence” (GRECO, 2016: 33). In a positive way was assessed the Code of Professional Conduct and Ethics adopted by the SCM in 2015 (GRECO, 2016). The system for random case allocation became operational in 2013, but it is vulnerable to manipulations (GRECO, 2016; Hriptievschi, 2017).

The Prosecution reform did not achieve any progress in 2012, unlike the field of integrity and anti-corruption in which key institutional changes were defined through legal amendments. The Center for Combating Economic Crimes and Corruption was transformed in National Anti-Corruption Center (NAC) and the National Integrity Commission for civil servants was established, while the Economic Court of Appeal was abolished. The European Commission acknowledged this as an alignment “of Moldova’s legal framework with the main international instruments” (European Commission and High Representative of the European Union, 2013: 8), which is an example of socialisation of the EU.

However, these reforms stalled between 2013 and 2015, due to institutional resistance and the internal AEI conflict. In 2013 a Strategy for the Prosecution Office reform was adopted, but no agreement was reached on the draft prosecution law. The draft was sent to the Venice Commission for its opinion as this was an EU condition. The impossibility to adopt it in the Parliament, due to the lack of support of the coalition partners, and of the Prosecution Office led to a blocked disbursement of one of the tranches of the EU Budget Support (Interview 80) and a negative EU assessment (European Commission and High Representative of the European Union, 2015a). This EU conditionality did not lead to any significant progress (European Commission and High Representative of the European Union, 2014: 6).

## ***II. IMPLEMENTATION OF THE REFORM***

The implementation of the anti-corruption reform was influenced by the changes in the institutional positions of key anti-corruption bodies as the NAC during the period of

political confrontation. The NAC accountability shifted from the executive to the Parliament in 2012 and back to the executive in 2013. This last change has also been criticised by the EU, given that “it cases doubts over the future of high-level anti-corruption efforts” (European Commission and High Representative of the European Union, 2014: 6). Under the NAC were established the Office for Fight Against Money Laundering and the Asset Recovery Office.

The NIA was also established in 2012 as part of the requirements for the Visa Liberalisation Action Plan negotiated with the EU. It is in charge of the control of the declarations of income and assets of public servants. The main weaknesses of the NIA were the “lack of an adequate legal framework and insufficient resources” (European Commission and High Representative of the European Union, 2014: 6). The Anti-Corruption Prosecution Office is in charge of the high-level corruption. However, a persistent weakness of this institution is the lack of clear definition of its functions and procedures. NIA and the Anti-corruption Prosecution Office were reformed in 2016 (European Commission, 2017c).

In addition, the Judiciary in Moldova was criticised for protecting the judges from investigation. Many cases that are reported in the media do not led to disciplinary proceedings and this reduces public trust in the institutions. On the other hand, criminal prosecution of judges became easier after the restriction of judges’ immunity in 2013. Since then the Prosecutor General or his deputy can initiate a criminal investigation if authorised by the SCM. In 2015 criminal investigations were initiated against six judges from Chisinau due to suspicion on manipulation of the random case allocation system (GRECO, 2016; World Bank, 2018). Some investigations are reported to be selective justice. For instance, the deputy-president of the Supreme Court resigned in 2015 due to the accusations of manipulation of the random case allocation system, presented by the president of the SCM. However, until the end of 2016 “no further information about any criminal case brought against the deputy president [of the Supreme Court] was made public”, which gives the impression the accusations were used in order to force her to resign (Hriptievschi, 2017: 28). Furthermore, in 2016 a criminal investigation was initiated in a closed meeting against a judge for her interpretation of a law (Hriptievschi, 2017: 28). These and similar investigations (Ms Manole from the Chisinau Court of Appeals) in closed-doors sessions reinforce the impression among citizens that selective justice is used to control the Judiciary.

The case of Vlad Filat is notorious because Ilan Shor, a close ally of the PD, was also convicted in 2017 for the one-billion-dollar theft, but he was never imprisoned and remained in politics during the PD-dominated government 2015 – 2019. After a trial behind closed-doors for the same crime, the former Prime Minister Filat remained in prison since 2015. These cases

illustrate how the control of key judicial and prosecution positions and their use for political goals can lead to citizens' vulnerability and inequality. Moldova's institutional system is often defined as state capture, due to its subordination to individualist goals of oligarchic structures, leading to extreme inequality in the access of citizens to public institutions.

The modification of the judicial map was adopted during the second AEI government presided by Leanca, as a key element of the Judicial reform strategy and the reforms agreed with the EU. Before the reform 29 out of 44 courts had less than 7 judges (Boskovic, 2015). The CSO Legal Resources Centre from Moldova (LRCM) defined the guidelines for the optimization of the judicial map, based on broad consultations. The publication LCRM study led to the reduction from 44 to 15 courts in 2015 (GRECO, 2016).

In conclusion, in spite of some positive aspect, the political conflict between the AEI elite led to serious challenges and sometimes even the impossibility to reform the Judiciary and the Prosecution Office. Besides, the difficulties met in the Parliament, led to the centralisation of the reform processes in the executive, through the conformation of more closed Anti-Corruption Commission and the need to adopt emergency legislative procedure in order to overpass the Parliament. Furthermore, a trend of selective justice and prosecution has been observed in the period, which explains the importance attributed by domestic elite on the control of certain non-representative institutions, as the Prosecution Office, Anti-Corruption Agencies or the Judiciary. Therefore, the possibility to instrumentally use these institutions for party or even personalistic goals is a highly valued political asset. Even more so than the public trust or the positive incentives and socialisation efforts provided by the EU.

In the period between 2015 and 2016 several corruption and money-laundering scandals were uncovered which re-structured the party system in Moldova and its relations with international actors. In 2015 a group of investigative journalists supported by the European Endowment for Democracy uncovered what is currently known as the "theft of the century", which consisted in the disappearance of one billion US Dollars from three commercial banks. This amount represented 12% of Moldova's budget and was provided as loans between 2013 and 2015 "with no respect to prudential norms" and under the passive supervision of national regulators (including the NAC) (Alaiba, 2017). The National Bank provided two loans to these banks and issued bonds to repay the debt in order to protect citizens' savings (Alaiba, 2017). The differentiatonal empowerment of EED with its flexible funding instruments was key in this case (European Endowment for Democracy, 2016b).

In the same period, the Russian Laundromat involved Russian companies, oligarchs and wealthy businessmen, who moved funds from Russia to Western Europe through Moldovan Banks. Such schemes take advantage of legal loopholes, lack of regulation or compliance of certain financial institutions, but also require the cooperation of corrupt or negligent official of private companies and public institutions. In this way Russia's corruption and the need to launder funds from Russia feed into the corrupt system in Moldova, reinforcing the informality and the instrumental use of state institutions (Sanduta *et al.*, 2014; Alaiba, 2017; Radu, 2019). These aspects influence the preferential fit of the domestic actors, as bribery undermines any normative compliance with the Rule of Law values.

As a reaction to the bank theft and the Laundromat revelations, the EU applied negative conditionality to Moldova, which influenced negatively the PDM led government established after 2016. However, this did not contribute for changing the track on which were set the reforms in Moldova. The only achievement reached in the period 2015 and 2016 was the intensification of the arrests of key figures involved in the most notorious corruption scandals. Even if the former Prime Minister Vlad Filat was convicted and arrested in Parliament for passive corruption, Ilan Shor, leader of a political party that supported the PDM, was convicted for giving a bribe to Filat, but was placed under house arrest. Other important arrests were Denis Uerechi, Ion Rusi and Viaceslav Platon. In September 2016 a month before the Parliamentary elections "fifteen former or acting judges and three court bailiffs were arrested" for their involvement in the banking scandal (Center for Combating Economic Crimes and Corruption, 2017). In spite of these arrests, the difference in treatment between Vlad Filat and Ilan Shor, still provided clear indications of selective justice according to political goals.

Judicial and Anti-corruption reforms continued the trend established after 2011, as legal acts have been adopted, but their institutional development or implementation was limited. The Law on Public Prosecutor's Office and the Law on Specialised Prosecutor's Office was adopted. The weaknesses of the anti-corruption unit of the General Prosecutor's Office identified before the 2016 reform were the "low penalties, and some cases of impunity, and the lack of autonomy, capacity and independent decision-making" (European Commission, 2017: 38). In 2016 the Anticorruption Prosecutor's Office was established with the authority to deal with both high-level and petty corruption cases. However, its competences are narrowly defined, and they overlap with some of the competences of the NAC, leading to important challenges in the fight against corruption due to the lack of clarity on the competent body.

In spite that the limitations of the Prosecution Office were clearly identified by international and domestic experts, the reform adopted in 2016 did not address key weaknesses. This lack of clear normative framework means that in practice the prosecution and investigation focus mainly on petty corruption. Apart from the well-known cases, the “focus is not on the high-level corruption” (Interview 76). In addition, both institutions face a traditional hierarchical structure and dependence on approval from superiors or from the Judiciary/Prosecution for using special investigative techniques, which *de facto* limits their capacity to act. The authorities refused to give full competences to investigate to NAC and to make it a transparent and accountable institution. The decision-makers are against giving power to somebody else (Interview 83) leading to the lack of effective implementation of the reforms.

The National Integrity Commission “suffered from the lack of an adequate legal framework” (European Commission, 2017: 71). In 2016 it was renamed National Integrity Agency (NIA) and it obtained wider competences in terms of sanctions, staff increases and training. Its independent functioning was also strengthened, as its Chairman is no longer appointed by the President. A key weakness identified by international actors is its focus on small and middle range public officials, while investigations of high-level officials are lacking. In addition, in spite of a substantial salary increase in 2016, the lack of applicants persisted in the last years, because it is an intrinsically political work, as they would have to look at the declaration of the governing party (European Commission, 2017: 78). Recent research has confirmed that the key obstacles are “lack of political will and informal officials’ control over the” institutions as NAC, NIA and Prosecution (European Commission, 2017: 78). Romanian experts argue that “politicians comply in a minimalist way with the anti-corruption recommendations of the EU. They create new institutions, but allocate insufficient funds; adopt the required laws, but dilute their content” (Gamurari and Ghinea, 2014: 2).

The nominations of key judicial bodies since 2016 confirm the political control over them. The Head of the Supreme Court nomination took place in three competitions, leading to the appointment of a candidate close to the political power. In addition, selective justice in investigation, prosecution and even conviction has been reported by CSO to a large degree in the period after 2016 (Transparency International, ADEPT, Viitorul, 2017). Such actions show high degree of state capture and contribute to democratic weakening in Moldova.

After the bank scandals in Moldova and the consequent EU conditionality the PDM became more and more isolated in 2018 and 2019, while the Socialist Party (PSRM) and ACUM (NOW) emerged as clear pro-Russia and pro-EU alternatives respectively. Between June and November 2019, the Pro-EU ACUM and Pro-Russian PSRM led a coalitional

government with the support of the EU and Russia against the oligarchic trends dominant in PDM's Moldova. This government focused on adopting key Rule of Law reforms. Maia Sandu (ACUM) assumed the Prime Ministerial position and Andrei Nastase (ACUM) became the Minister of Interior and other key ministries as the Ministry of Justice and reform processes were prerogatives of ACUM. The Prime Minister asked the members of key Rule of Law institutions as the Supreme Court, the Prosecutor General to resign, because of their lack of legitimacy as PDM supporters. This step is a key aspect given the importance of replacing politically controlled personalities in key positions. Control over key officials represents the last stage at which state capture takes place, when reforms are partially implemented and the individuals supportive of party or oligarchic interest influence the regular functioning of the Judiciary.

However, it is important that this process is also affected by the coalition dynamics between ACUM and PSRM. For instance, at the end of 2019 Ruslan Flocea, a former adviser of the Socialist President Igor Dodon, was nominated as a director of NAC. In addition, the PSRM has focused on controlling security related institutions as the Ministry of Defence and the Intelligence Services (Cenusa, 2019). This distribution of positions indicates the priorities of PSRM. In a similar way as the first and second AEI coalition, ACUM controls most of the ministries focusing on Rule of Law reforms. In parallel, civil society organisation signed a petition that some of the key nominations are done in non-transparent way. Domestic analysts criticised that “[t]his political coalition is making the same mistakes as the old regime by dividing institutions between them which shouldn't be divided by political interests: the prosecutor's office, the anti-corruption agency and the judiciary” (Cristina Țărnă quoted in Rata, 2019). Unfortunately, the disagreement between ACUM and PSRM on the nomination of new Prosecutor General after the resignation of Harunjen, considered close to PDM. In the process of nomination of new Prosecutor General, ACUM argued that two of the members of the selection committee gave “biased scores to the Socialist's favourite candidate” distorting the outcome (Necsutu, 2019a). In order to prevent such decision, Maia Sandu declared that will take political responsibility for the nomination of the Prosecutor General, which led to a successful PDM-PSRM vote of no-confidence, ousting ACUM from the government. The fact that the nomination of the Prosecutor General led to the dissolution of this fragile coalition shows the central role of this institution for Moldova's Rule of Law weaknesses.

### ***III. CONTEXTUAL FACTORS***

Unlike Armenia and Georgia, Moldova has remained a parliamentary democracy with election-driven changes in office. The long periods in which it was part of Romania or

Russia/Soviet Union have defined deep social divisions and the lack of clear national identity, which have so far made difficult the consolidation of powerful state institutions (Popescu 2012). In addition, the civil war in Transnistria led to its *de facto* independence and the reinforcement of historical and geopolitical divisive lines (Nodia 2017; Way 2015). In terms of international alignment, the failed negotiation of the Kozak memorandum in early 2000s hindered a sustainable cooperation between the Moldovan and Russian government (Berglund *et al.*, 2013). In addition, the conflict affected the 2009 – 2011 election cycle, as a mediating factor in the definition of Moldova’s foreign policy (Way, 2015a).

From a historical institutionalist perspective, these critical junctures defined a system of cleavages that revolves around the foreign policy preferences of the population, the inter-ethnic relations and national identity of the country, rather than ideological preferences. For instance, the AEI is united by their pro-EU stance, but have an observer status to three different European party families (ALDE, EPP, PES). On the other side, the Socialist Party has clearly expressed its support for closer relations with Russia. Moldova’s Parliament was controlled by a disciplined centralised majority only during the first government of the Party of Communists (PCRM) between 2001 and 2005. PCRM is highly institutionalised and disciplined party in comparison to the unstable pro-EU coalitions. The overlapping of these issues served as a basis for the establishment of a more pluralist, complex, fragmented and in occasions polarized party system, with systemic institutional deadlocks as in 2000 and 2009 - 2011. The consolidation of authoritarian practices during the government of the Communist Party (2001-2009) was followed by the electoral victory in 2009 of the AEI with the declared goal to “dismantle the communist patron-client network” (Tudoroiu 2015: 659). The political polarization was accompanied by economic crisis and street protests (Popescu, 2012).

Like Georgia, political parties function as “the clientelist vehicles of powerful individual leaders” that many have referred to as state-capture (Berglund *et al.* 2013: 757; Tudoroiu 2015; Jagland 2015). Lastly, as in Georgia relatively weak leaders are selected for official institutional positions (President and Prime Minister), while Vlad Plahotniuc as a strong oligarchic leader retained large portions of informal power and influence over the party structure and state institutions. This trend in Moldova and Georgia clearly indicates the growing integration between informal networks, political parties and state institutions. However, Moldova differs from Georgia in the dependence of the Moldovan neopatrimonial networks on domestic economic activity and on the fact that Moldova followed a process of internal struggles and succession of different neopatrimonial networks.

#### ***IV. PARTICIPATION AND COMPETITION***

The two successive governments of the PCRM (2000-2009) led to democratic weakening, which was followed by a complex power transition between 2009 and 2011. In 2009 the Twitter Revolution took place as a reaction to the preliminary election results. Due to the impossibility to reach the constitutional majority required for the election of the President (indirectly elected by the Parliament), three parliamentary elections took place between 2009 and 2011. The support of the Communist Party decreased from almost 50% (60-62 MP) in 2009 to 39% of votes (42 MP) in late 2010. And the AEI continued the trend of fragmentation which defined the pro-EU political spectrum, with unstable coalitions incapable to concentrate power (Berglund *et al.*, 2013; Way, 2015a). The 2009-2013 AEI governing coalition was composed of four pro-EU parties (the Liberal Democratic, the Liberal Party, the Democratic Party and Our Moldova Alliance), which formally belonged to different ideological families. The three parliamentary elections that took place between 2009 and 2011 did not allow to pursue any political reforms, but instead was defined by a complex process of “elite network coordination and succession politics” and negotiations between intertwining factions of the PCRM and the AEI that defined a new unstable power configuration (Hale, 2015b: 49).

As described the apparently high level of resonance of the democratic values shown in the AEI coalition agreement, did not imply actual commitment to the reforms. In 2011 a secret annex to the AEI coalition agreement showed that the parties had agreed on the distribution of formally *independent* positions as the Prosecutor General (PD), the Court of Auditors (PLDM), the Center for combating economic crime and corruption (PD), the National Security Agency (PL), as well as financial-banking administration institutions (PLDM, PDM and PL, 2010a; Publika.MD, 2011). This informal agreement proves that the control of key judicial and law enforcement positions is highly valued power asset. Interestingly, the PLDM was in charge of the Ministries of Justice and Internal Affairs, while the PDM nominated the Prosecutor and the Center for combating economic crime and corruption. This also explains that the institutional resistance showed by the Prosecution Office to the reform is also a political resistance by the governing elite. These are different problems that need to be tackled separately. (the Democratic party PDM). Furthermore, this informal agreement between the political partners illustrates a high level of instrumentalization of formal (independent) institutions by political parties for informal competition goals.

In addition, many Moldovan political parties are personalist top-down organisations led by oligarchs with large economic interests, which projected the image of parties used as

political instruments. The AEI leaders were perceived as successful businessman, “among the richest citizens of Moldova” and its government is defined as ‘oligarchic pluralism’ (Cafus 2016; Kononczuk et al. 2017: 3). The inclusion of candidates linked to oligarchs in the AEI parties’ lists indicated the support provided by influential economic interests. The PDM would include names as Chiril Lucinski (with large assets in media), the oligarch Plahotniuc (Prime TV network) shifted his support from the PCRM to the PDM together with Marian Lupu. The PLDM was led by Vlad Filat (whose assets and business links originate in the 1990s privatisation period), Iurie Leanca (vicepresident of the ASCOM corporate conglomerate) and since 2012 Chiril Lucinski. The PLM enlisted Anatol Salaru (another ASCOM vice-president) (H. Hale, 2015b). This broad support and the change of allegiance of key business interests from the PCRM to the AEI, illustrates to what degree political parties are used as instruments for influencing political decisions and control of institutions.

Domestic analysts have described the AEI political elite, not as politicians, but rather as “businessmen who use politics exclusively as an instrument to promote their illegitimate economic interests” (Glasul 2013; quoted in Tudoroiu 2015: 671). The period after 2009 has been defined as state capture (Tudoroiu, 2015; Leitner and Meisner, 2017). Therefore, these informal costs and benefits influence the preferential fit of politicians, when they implement RoL reforms. The AEI could not agree on significant institutional reforms, comparable to the ones that Saakashvili developed in Georgia, which confirms the importance of elite cohesiveness for the implementation of strong reform agenda (Popescu, 2012; Kupatadze, 2016). This trend was reinforced, because the AEI members behaved as “political competitors in the electoral race” (Berglund *et al.*, 2013). Therefore, their differences influenced the domestic reform process in Rule of Law and its outcome.

As described above, the first step of the reform process was the adoption of EU-promoted inclusive and comprehensive reform strategy with broad parliamentary support including the PCRM. The Strategy included amendments suggested by the Supreme Court of Justice, the National Institute of Justice and the General Prosecutors Office (Parliament of Moldova, 2011). Interestingly, 8 out of 10 suggestions of the Prosecutors office were not reflected in the Strategy (due to their focus on too political or too specific statements that would be considered at the Action Plan level); 3 out of 8 recommendations of the Ministry of Interior (due to overlap with other aspects in the strategy); 6 out of 26 recommendations of the Ministry of Justice of Romania. The Courts suggestions emphasized aspects as the importance of the provision of enough funding, technical and material support and training. It is interesting that the Supreme Court of Justice or the High Council of Magistrates did not provide suggestions

at this stage, reserving them for the Action Plan level. Some stakeholders criticised the short period for consultations and the fact that it took place during the summer holidays, as well as “the lack of reasoning” for not accepting specific suggestions (Boskovic, 2015: 5). On the other side, it is interesting that out of 358 suggestions 158 were provided by external donors or experts. The Council of Europe provided 100 suggestions, a majority of which refer to the need to refine the indicators of the Strategy, as they were considered too broad.

The limited impacts of the Strategy between 2011 – 2015, can be explained with the commitment limited only to some members of the executive. Legal amendments were adopted by the government and were conditioned by the normative development and implementation by politically-controlled judicial institutions, that were not willing to allow Judicial impartiality. Therefore, the reforms were challenged by both institutional and political resistance. As a domestic CSO actor underscored:

*“So, while conducting such reforms one should not focus solely on the legal provisions. You cannot regulate everything, but rather focus on the sources of potential influence. And those would be the political parties. So, at the end of the day all the reforms relate to how integral are the political parties. And when discussing about the rule of law reform [...] one should first consider in a thorough manner which are the interests of [...these political parties...]. The behaviour and the practices of politicians - they do not start in the position of MP” (Interview 78).*

Connectedly, an interviewee concluded that “the strongest opposition to reform was the justice itself and the politicians, while the strongest supporters were the development partners, media and civil society”. A key weakness was the lack of a “strong political back up”. It was just the Minister of Justice that was committed, while the success of the reforms depended on the balance between political parties (Interview 75). The same interviewee claimed that “the reform should not depend on one person. [...] It should lay on an institution. [...In] the previous justice reform, it was not clear [...] who is in fact the milestone to refer to” (Interview 75).

Connectedly, the affiliation network of Figure 12 below shows the background of the members comprised in the Commission established in 2012 for the implementation of the Judicial Reform Strategy. This affiliation network shows that members with executive and Judicial background are pre-dominantly represented in the implementation Commission. This observation is in line with the reports of domestic and international actors that argued that the lack of parliamentary support blocked important part of legislation expected to be adopted. In addition, as described the implementation of some key measures were negotiated between the

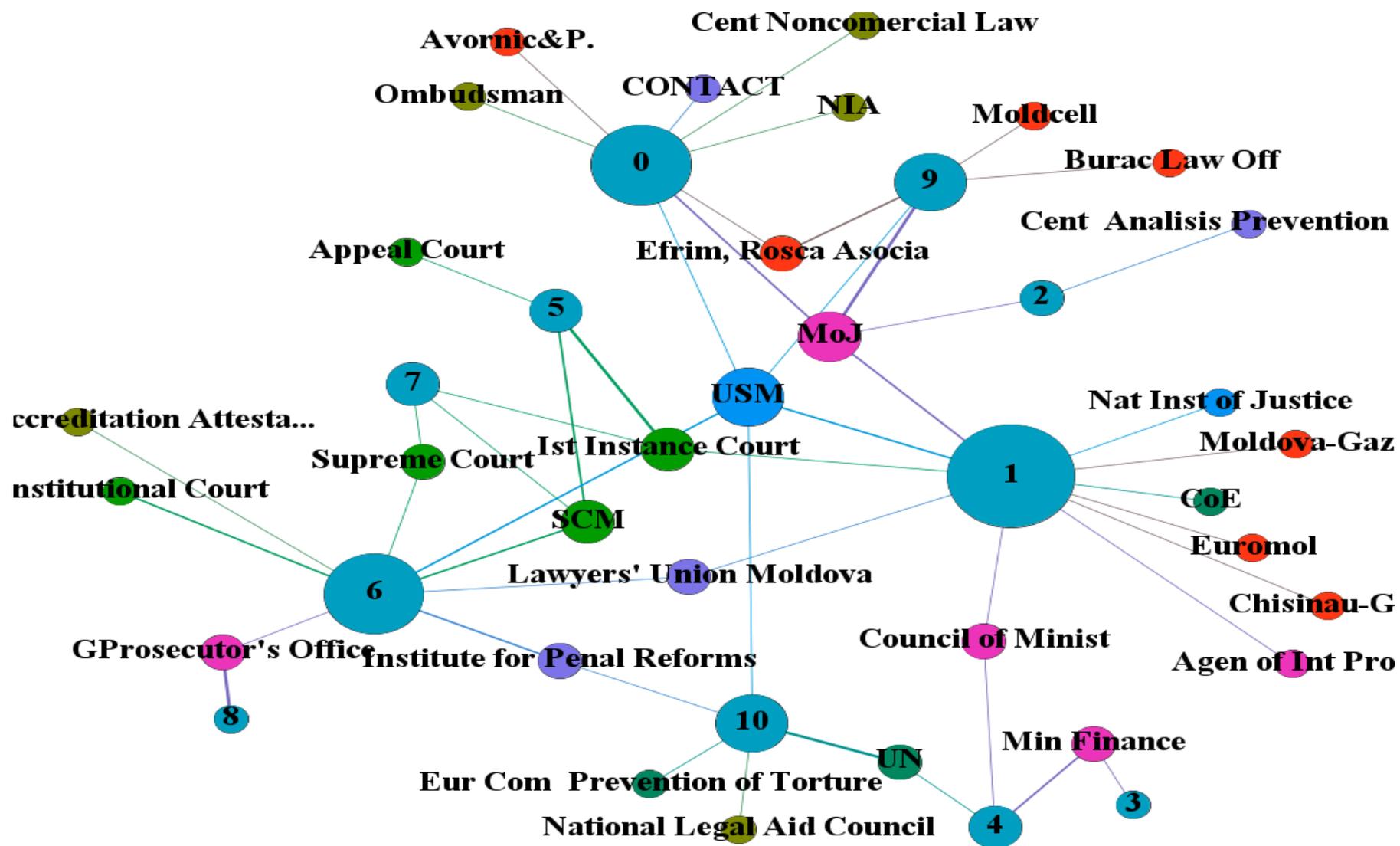


Figure 12. Affiliation Network based on the Commission for the implementation of the Judicial reform strategy Moldova (2011 – 2016)

executive and the judiciary in the framework of this Commission, as for instance the increase in the funding of the Judiciary, which was a key step that allowed the advancement of the reform. In this sense, it is important that the executive is represented mainly by the Ministry of Justice (linked to four members of the Commission), the Council of Ministers, the Ministry of Finance and the General Prosecutors' Office (linked to two members of the Commission). Besides, the Judiciary is represented by members that have three connections to First Instance Courts and the SCM, in addition to the Supreme Court (linked to two members), the Constitutional and Appeal Courts (both connected to only one member). In addition, many of the members are linked to private firms, where they have worked as lawyers. It is notorious that the many representatives of the executive that were part of this commission shifted their careers towards private or civil society sector after the end of the AEI coalition in 2015. Lastly, it is important that the State University of Moldova (USM) is the institution that has a connection to five members. In summary, the affiliation network presented in Figure 12 confirms that the Commission was a key platform for negotiation of the implementation steps between the executive and the Judiciary. In addition, the lack of involvement of MP in it explains and confirms that many of the measures were not supported by a majority of deputies in the Parliament, which led the government to adopt emergency laws.

Importantly, the trend of political participation in the Prosecution reform were more limited compared to the Justice reform process (Interview 75 and 74). Similar trend was observed also in Georgia. On this occasion, the working group for the reform was concentrated in the Ministry of Justice and the Prosecution Office. According of CSO and members of the executive, much greater resistance was met on the side of the Prosecution and the coalition members than in the case of the Judicial Strategy reform approved in 2011 under the first AEI coalition (Interview 75 and 80). The impossibility to adopt the draft law on the Prosecution in the Parliament led to lack of disbursement of one of the tranches of the Budget Support provided by the EU and was negatively assessed by the European Commission Monitoring report (European Commission and High Representative of the European Union, 2015a)

In addition, interviewees reflected on the importance of political will and commitment of the elite, as on previous occasions administrative practices (reduction of pre-trial detentions) have changed based on the messages sent by the government. Therefore, it is important that “the society and the judges are very very attentive to [...] what is the general political message. And they will follow it. This is why it is very important to have good politicians with a very strong commitment to the rule of law not just in words. But in actions” (Interview 74).

Furthermore, “we have a lot of strategies [...], but none of all these strategies is applied in fact”. Due to this lack of commitment there is an “unusual situation when you have young judges – it means they are good; you have good legislation, but bad results” (Interview 74, 80).

Interestingly, several interviewees related the weaknesses of Moldova’s institutions with the Communist legacy. One interviewee explained selective justice as “the political power tried to protect the members and to offer them some protection against prosecution [...] It’s not informal protection, but I think it’s more a cultural and historical tradition. This is part of our Communist heritage”. It was pointed out that “[e]verything is so formal here, it’s like in the Soviet system. We have a very democratic instrument, but in fact the Communist Party dominates the power” (Interview 74). These references to the communist legacy are essential from a historical institutionalist perspective. However, they also appear to be an intellectual common place which is used to explain all current weaknesses, while ignoring how this institutional legacy has interacted with the oligarchic trends consolidated during the transition.

The trends of domestic competition changed after the 1-billion bank theft was made public. Social protests dominated Moldova’s political life in 2015 and 2016. The leadership of social protests organized around the Dignity and Truth platform, which was led by a group of prominent journalists, social activists, CSOs and lawyers. In February 2014 they adopted a manifesto which criticised the lack of Rule of Law and accused the former pro-EU coalition of “mimicking reforms for the last five years” (Grejdeanu and Botnaru, 2015). From these protests emerged the leaders of the current pro-EU party, ACUM, as Andrei Nastase and Maia Sandu.

Against this background, the Parliament nominated the new Prime Minister, Pavel Filip from the Democratic party. The conflict between the members of the former AEI coalition increased and their legitimacy was reduced after the revelation of the Bank theft. An agreement between the coalition partners PDM, PLDM and PLM was signed in July 2015, which led to the consolidation of the political control of the Democratic party (European Commission, 2017c). A key consequence of this temporary victory was the harsh rupture between Filat and Plahotniuc, which led to the arrest and prison sentence of Filat (Kononczuk, Cenusă and Kakachia, 2017; Nizhnikau, 2017b). After these events the coalition government did not survive a no confidence vote in December 2015, and the PLDM refused to take part in a government led by Plahotniuc or by Pavel Filip from PDM. In January 2016 a “new government was invested, led by Pavel Filip” and supported by “20 deputies from the PDM, 13 deputies from the PL, 14 ex-communist deputies, 8 deputies from the PLDM and 2 former PLDM deputies” (Alegeri.md, 2019). In this way, in spite of counting with only 19 deputies in

the Parliament, the PDM managed to gather a parliamentary majority (Levcenco, 2016; Kononczuk, Cenusa and Kakachia, 2017). The former communist party had fragmented in two factions: the former PCRM (which gained 21 MP) while the PSRM of Igor Dodon (with 23 MPs) (Alegeri.md, 2019). In addition, Vlad Plahotniuc, remained without any representative position, but managed to establish dominant control of the economic and political sphere.

Social protests became an important means for the expression of social dissatisfaction against the oligarchic system and its control of formal institutions, which coexist with poverty and deep social grievances (Demytrie, 2015; Bumbu, 2016). The protests continued in 2016 in response to the introduction of controversial reform initiatives by the governing coalition, as the electoral code and the NGO's regulations (Bumbu, 2016; Popsoi, 2017). These reforms aimed to imitate the space for civic organisation and social participation, by restrictions or controls the activities organised or the funds received from domestic, but mainly from international donors. Similar legislation has been suggested in 2015 and 2017 in Armenia and Moldova in order to control "foreign funding of NGOs involved in activities aimed at influencing legislation or 'political activities' defined very broadly" (Emerson et al. 2017: 12).

The consequence of the isolation of both domestic and international organisations led to the de-legitimisation of the Democratic Party and to differential empowerment of opposition reform-oriented actors. This trend led to important changes in the party competition. Firstly, after the PDM was discredited as a pro-EU party, due to the limited outcomes of the reform and the reduction of EU funds. As a reaction the PDM adopted new political discourse. At the 2018 PDM assembly, Plahotniuc suggested a new fourth, pro-Moldova way "for solving the concrete problems of the people" (Publika.MD, 2018). The PDM was presented as an alternative fourths direction for Moldova's development – "one is the way to the European Union, another it is the Eurasian way and the third way is the one of unification with Romania" (Publika.MD, 2018). This populist discourse based on the national development before everything, is adopted by the PDM with the aim of defending its political position.

Based on the pro-Moldova path, certain circles of the PDM party defended that the EU after 2015 was not anymore a "reliable partner", because it "started to implement I would say an unfriendly policy towards, towards Moldovan government of course, but this is this means towards Moldova" and "it supported explicitly the opposition [...] pro-European right-wing opposition represented by Maia Sandu and also by Andrei Nastase" (Interview 69). This support is interpreted as based on the "absolute obedience" of the "right-wing opposition which behaves like slaves in its relations with Brussels" (Interview 69). The PDM is not willing to do

such sacrifices and the “EU must learn how to cooperate with partners, not with slaves” (Interview 69). It is claimed that the AA did not cover the political conditionalities that led to the suspension of the assistance and this leads to interference with internal affairs (Interv 69).

The second new trend of competition was the coalition ACUM, between the political initiatives of the former prosecutor and leader of the social protests, Andrey Nastase (PPDA) and former member PLDM minister – Maia Sandu (PAS) that emerged as a pro-EU opposition party which addressed the lack of Rule of Law. The credibility of the ACUM coalition increased after 2015. In 2018 Andrei Nastase won the elections for Chisinau mayor, but did not take the position due to the invalidation of the elections by the Supreme Court. Thirdly, the position of the Socialist Party (PSRM) were strengthened after the 1-billion theft from Moldova’s bank system. The PSRM elected president in 2016 clearly supported Moldova’s membership in the Eurasian Economic Union, in which he achieved an observer position. In addition, 38% of interviewed supported EU membership, while 40% the EEU membership (Baar & Jakubek 2017: 86). At the end of 2018, before the Parliamentary elections in 2019 two clear pro-Russia and pro-EU camps had consolidated after the 2015 transformations.

Importantly, the brief coalition between the PSRM and ACUM clearly showed the competition between them. In August 2019 the Prime Minister Maia Sandu established a Commission for the Judicial reform adjunct to its office and in October 2019 the President Igor Dodon established a parallel consultative commission adjunct to his office. This creation of alternative and parallel policy-making platforms illustrates the lack of consensus among the coalition partners which led to its dissolution weeks later. The affiliation network in Figure 13 below is built on the basis of the biographical information of all the members of the Commission established by the President Dodon. The membership of the Commission attached to the Prime Minister was not found publicly available for the same purpose. Importantly, in the Presidential consultative commission the Prosecution is the institution that has the highest number of links to its members (5 members have been affiliated with the Commission). This trend was also observed in Armenia and in Georgia’s Commission for Judicial reform for the period 2017-2021 (see Figure 13 below). Interestingly, the Lawyers Association is an important institution to which four members of the Commission have been affiliated. The other institutions which have 3 links to Commission’s members are the USM, the Ministry of Justice, the Parliament, the Council of Europe, and First instance courts. In addition relatively balanced features of this commission, it also includes several members that have been involved in international organisations and civil society, which might be an indication of the efforts to legitimise the decisions adopted by the is Platform.

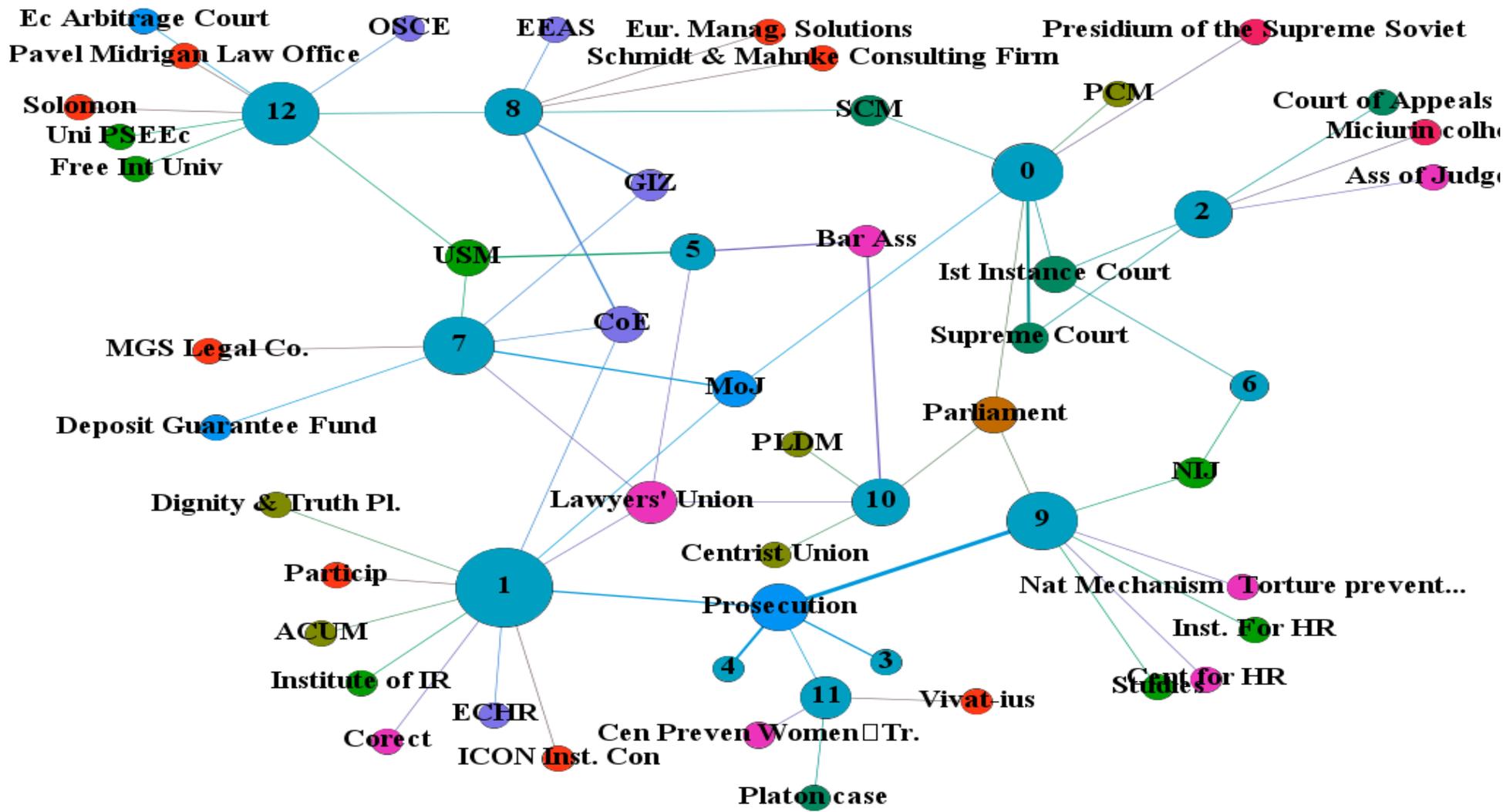


Figure 13. Affiliation Network based on the Commission for the implementation of the Judicial reform 2019

## ***V. INTERNATIONAL FACTORS***

Between 2010 and 2015 the EU focused its funding and normative support on Moldova and on Rule of Law. In 2010 the negotiations for the EU-Moldova Association Agreement began and were followed by the DCFTA consultations. For the period 2007 – 2013 Moldova received 482 million Euros in financial assistance, which represents the highest amount per capita in the Eastern Partnership (Kostanyan, 2016b). Observers noted that “since 2009, when the [AEI] came to power, [t]he EU refrained from criticising Moldova’s elite, but chose instead to throw money at the country’s problems” (Kostanyan, 2016: 3). This raises the question if Moldova was rewarded for choosing the EU integration rather than for its actual commitment to reforms and approximation with the EU values. The geopolitical component of the EU assistance is illustrated by the continuous increase in the EU funding for Moldova in this period. The annual amount provided grew from 40 million euros disbursed in 2007 to 94 million in 2012 (European Commission, 2006, 2012a). In addition, a Visa Liberalisation Action Plan (VLAP) was suggested by the EU in January 2011, only one month after the consecutive electoral victory of the AEI. The provision of such incentives for choosing EU integration alignment shows appreciation of the EU alignment, as during the constitutional and political crisis (2009-2011) no new and significant reforms were developed (European Commission and High Representative of the European Union, 2011).

The EU support has evolved towards more political topics. The EU provided key normative input for the good organisation of this reform. In 2010 EuropeAid commissioned an in-depth assessment of the Rule of Law and Administration of Justice for Sector-Wide Programming, which contributed both for EU programming, and for the Judicial reform strategy (2011 – 2016) (Vitkauskas, Pavlovshci and Svanidze, 2011; Interview 30). If the 2008 EU intervention in Justice, Liberties and Security focused on border and migration management, the 2011 programme provided 10 million Euros in “Support to the Justice Policy Reforms”. This programme focused on the alignment of different stakeholders and priorities in “a coherent sector wide reform strategy” and on the increased efficiency of the judiciary, in terms investigation, training, prosecution and judiciary as such (European Commission, 2011b: 5).

This support provided by the EU to certain degree achieved its goals which at this stage was the initiation of a comprehensive Judicial reform strategy. Based on the “findings of reports produced by civil society, international organizations, especially the evaluation report prepared by experts of the European Union [...] which is the most recent and comprehensive

document assessing the current status of the justice sector”, the government of Moldova adopted in June 2011 the Strategy for Justice Sector Reform (Parliament of Georgia, 2011). As in the case of Armenia and Georgia, the adoption of comprehensive and inclusive strategy was part of the EU conditionality and was achieved by the three governments. Interestingly external donors or experts provided 158 out of 358 suggestions for this strategy, with special focus on the Council of Europe (100 recommendations).

In addition, an important part of the CoE experts’ recommendations refer to the need to refine the indicators of the Strategy. The CoE expert suggested new formulations of the indicators, as for "the number X of presidents and delegated presidents selected according to the new criteria, in year X". In spite of accepting this recommendation, the indicator remained vague and open to interpretation “Revised number of Court (deputy) Presidents”. This example illustrates the way in which domestic actors adapt specific recommendations, ensuring they have additional space for discretion in the implementation. In addition, external experts also suggested replacing indicators that are “a mix between measures to achieve the proposed objectives [...] and indicators” (as “the formulation of a proposals for legislation”) with more specific indicators as “adoption of a legal act” (Ministry of Justice Moldova, 2011: 66). These examples provided by the international expert show how domestic actors leave space for discretion when monitoring the implementation. On the other side, it also confirms the observation made in Georgia that sometimes the indicators do not allow monitoring beyond the adoption of a law. This conclusion was confirmed by the evaluation of the implementation of the Judicial Reform Strategy, which concluded that it “does not allow to measure outcome of the implemented activity, e.g. amendments to law is activity and indicator is law adopted by Government and submitted to the Parliament without indicator in which direction the law will be amended and what type of change it will cause” (Boskovic, 2015: 9).

The 2010 ENP monitoring report acknowledged that a “comprehensive justice reform strategy was adopted”, which “sets the scene for a large EU technical assistance and budget support (EUR 62 million)” (European Commission and High Representative of the EU, 2012: 4). In addition, a law for the establishment of a National Anticorruption Commission was discussed in 2011, and an Anticorruption Strategy and Action Plan was adopted by the Parliament (European Commission and High Representative of the EU, 2012: 5). As in the case of Georgia, Budget Support has been provided after successful adoption of the Strategy. As described above the Budget Support is among the most flexible funding instrument of the EU which defines performance monitoring and criteria for disbursement of four different tranches according to the level of compliance (European Commission, 2012d).

The head of the EU Delegation in Chisinau recognised “the marriage between [the EU and Moldova] is a good one, in any case above the average” (IPN Moldova, 2011). He added that both “parties must contribute to strengthening the relationship [...]. The Republic of Moldova, by deepening the Europeanization reforms in the fields agreed with the EU, and the EU increasing its technical and financial assistance to facilitate these reforms” (IPN Moldova, 2011). This statement clearly identifies the road towards Europeanisation as the goal of the EU – Moldova relationship. The principle of ‘more-for-more’ focuses on Moldova’s progress in the ‘Europeanisation’ reforms, while the EU responds with increased technical and financial assistance. There is a direct link between reforms - ‘Europeanisation’ - and increased funding.

The AEI government received very positive political assessments by the EU. In 2012 the EU Commissioner for Neighbourhood, Stefan Fule said that “the Republic of Moldova is a success story [...] We have agreed that we need success stories and R. of Moldova is such a good story. They have been capable of offering concrete result-oriented progress over a short period of time” (Nine O’ Clock, 2012). In October 2013, one month before the signature of the AA/DCFTA, Fule said that “Moldova’s efforts to implement the European values make it an important partner for the EU and Eastern Partnership front-runner” (European Commission, 2013d). As a consequence of similar statements, researchers and domestic actors point out that the EU needs a success story in the neighbourhood and it is willing to ignore certain limitations in Rule of Law reforms (Kostanyan, 2016b; Interview 28).

The Anti-corruption legislation adopted in 2013, which included mainly Judicial measures and the Prosecution reform strategy, was “spearheaded by the signature of an Association Agreement with the European Union in June 2014” (European Commission, 2017: 71). The approval of the Visa Liberalisation with Moldova was suggested by the European Commission in November 2013 due to successful compliance with the requirements included in the VLAP. Therefore, the reform efforts between 2011 – 2013 were rewarded with the achievement of a substantial long-term goal of Moldova’s government. Given that the signature of the AA and the Visa Liberalisation constituted the highest possible incentives available in that period, the lack of significant progress in the reform processes in 2014 and 2015 can be attributed also to the lower credibility of possible sanctions. The AA/DCFTA and VLAP were important incentives that increased the political support of the AEI elite.

On the other hand, the impossibility to adopt the Prosecution law in the Parliament, due to the lack of support of the AEI coalition partners, and of the Prosecution Office led to a blocked disbursement of one of the tranches of the EU Budget Support (Interview 80) and a negative EU Monitoring report (European Commission and High Representative of the

European Union, 2015a). The effectiveness of this conditionality and discursive action on the side of the EU is questionable. In spite of consecutive claims that the “[p]riorities for reform are now the prosecution system and tackling corruption”, no significant progress was achieved (European Commission and High Representative of the European Union, 2014: 6).

In summary, the adoption of the reform strategy and of the legal amendments in the Judiciary provided the basis for the successful conclusion of the negotiation for the AA/DCFTA and the Visa Liberalisation Agreement. The relative success of these reforms between 2011 and 2013/2014 has been attributed to the PLDM representatives in the executive, being in charge of the key institutions promoting the reforms as the Ministry of Justice. However, it is important to keep in mind that the legal amendments adopted in the period 2011 – 2015 did not have significant impacts in strengthening the Rule of Law in Moldova, because they reflected mainly the perspective and commitment of certain representatives of the executive and remained at the level of policy documents, without leading to institutionalisation or any internalisation of the norms by Judicial and Prosecution actors.

However, the negotiation of AA/DCFTA with several EaP countries, including Georgia, Armenia, Moldova and Ukraine led to negative reactions from Russia and pro-Russian communities in these countries. The Crimean annexation and the pressure exerted on Armenia for reverting the AA negotiations are the most illustrative cases, but Moldova also suffered from similar pressure. Between 2013 and 2014 Russia banned Moldovan wine, meat products, canned vegetables, fruit imports and cancelled the trade preferences for 19 products (Cenusa *et al.*, 2014). The reasons invoked by Russia’s officials were the possible introduction of EU products through Ukraine, Moldova and Georgia and the acceptance of EU standards that differ from those applied in the Free Trade Agreement with Russia (DeMicco 2015). In addition, in May and September 2013 a ban on Moldovan wines was imposed, due to low quality and the discovery of chemical substances in it (Ria Novosti, 2013a). Measures against illegal migrants in Russia was also a way to exert pressure, due to the high amount of remittances received from Russia. The renegotiation of the gas price for Moldova was also considered by Rogozin, when he said “Energy is important. The cold season is near. Winter is near, We hope that you will not freeze this winter” (Dempsey, 2013).

In addition, the AA signing was also interpreted in the light of domestic cleavages and secessionist conflicts in Moldova. The Russian deputy Prime Minister Dimitri Rogozin and special envoy to Transnistria, accused the Romanian government of acting as “Trajan horse” in Moldova, as its plan would be to first sign the AA with Moldova and at a later stage annex the country to its territory (Radio Azatutyun, 2013b). When he visited Transnistria in 2013 he

said that the AA could “complicate the efforts to resolve the conflict over the breakaway Transnistria region” and that Russia would review its CIS trade agreement and gas import agreement with Moldova (Radio Free Europe, 2013).

After 2014 the meetings of the Russia–Moldova intergovernmental commission for trade to the CIS were completely discontinued. Moldova insisted on the lack of contradiction between the AA and the CIS, but the Russian side never agreed on this point (Interview 4). This evolution illustrates how Russia uses negative conditionality in order to dissuade the conclusion of the AA. The main leverage of Russia is the trade, the gas subsidies, the control of remittances sent by Moldovans living in Russia. Its support to the breakaway region of Transnistria also is used to illustrate the challenges that an agreement with the EU would imply for the negotiations with the secessionist region.

On the other hand, Russia does not focus its normative influence so much on values, as democracy and Rule of Law as the EU, but exploits domestic cleavages and social divisions. When Rogozin visited Transnistria, he pointed out that the meeting between Moldova’s leadership and EU Association Committee actually concerned NATO membership (Dempsey, 2013). Such possibility would be in direct opposition to the neutral status of Moldova. This trend is reinforced by the referendum celebrated in 2014 in the autonomous region of Gagauzia on the foreign policy orientation of Moldova. An overwhelming majority voted for Eurasian integration against the EU association.

The CIS sent an Electoral Observation Mission which was not allowed to enter Moldova by the government with the exception of one Russian member of the Duma – Roman Hudyakov. However, an observation mission of members of the European Parliament, linked with far right parties as the Bulgarian Ataka was received, contributing in this way to the legitimisation of the results (Podubniy, 2014). Hudyakov presented the referendum in Russian media as an initiative aiming to give the opportunity to Moldova’s population to “express their opinion” on the future relations of the country. The aim of the government of Gagauzia would be to extend such a referendum to all the country in order to preserve Moldova’s sovereignty and make the government comply with the vote of the population (Podubniy, 2014). In this way Russian media addresses key domestic cleavages and justifies the right of sovereign choice and popular vote. These ideas when presented on official media by a Russian deputy link the geopolitical discourses, domestic cleavages and normative ideas of democracy, putting Russia in a superior normative position. This discursive logic links identity-based cleavages with normative ideas as democracy and people’s vote.

In 2014, in parallel to Crimea's annexation, Transnistria's government expressed its desire to be annexed to Russia, due to the potential difficulties in case of EU integration of the country and to the unilateral decision of Chisinau to sign the AA. However, Rogozin on his official visit to Transnistria indicated that Russia is "still not ready to respond" to this unification. He underlined that unlike Crimea, the situation in Transnistria is now stable. However, he also explained that "the relations with Moldova will become worse" and that Russia will consider a way to support the region in case of EU integration (Ria Novosti, 2013b; Dzjanpoladova, 2014). Given the presence of Russian-speaking population in Moldova, the possibility of annexation is used as a hypothetical possibility in order to dissuade a potential EU integration. This is an example of discursive use of pre-existing identity cleavages.

Against this geopolitical background and the AEI unstable coalitional dynamics, the agreement of the EU to sign the AA and the Visa liberalisation agreement acquires another perspective. Therefore, it makes even more understandable the claims of certain researchers that the EU seeks success stories and rewards the geopolitical choice of the country. Interestingly, in October 2013 after indicating that Moldova is a success story, the EU Commissioned Fule continued that "political stability is an invaluable asset" (European Commission, 2013d). He referred to the "current pressure of Russia", "the EU plays no zero-sum game" and that "pressure is incompatible with our principles". The EU "respects and supports our partners' free, sovereign and autonomous choices in international relations" and "where such pressure is brought to bear, the EU will stand by Moldova", eliminating "quotas on imports of Moldovan wines to the EU" (European Commission, 2013d).

In conclusion, on discursive level both the EU and Russia engage in a discussion of the right of sovereign choice. However, the EU uses it in reference to the pro-EU coalition controlling the central government of Moldova, while Russia refers to the right of sovereign popular vote, a referendum on the future of the country. Secondly, both actors (the EU and Russia) strategically adopt instruments used by the other. For instance, Russia counts with international electoral observers including Russian and European MP as a legitimation tool of the regional referendum and engage with ideas as the right to vote. While the EU claims that it does not engage in zero-sum games, the improved conditions for Moldova's imports in the EU are important incentives that counter the Russian bans. In addition, the signature of the AA and VLAP are among the highest possible incentives, leading to a geopolitical competition in the region. As discussed in Chapter III Russia adopts a mimicking strategy of the EU normative discourse, while the EU adopts a more geopolitical position towards Moldova. Against this background the democratic weakening in the country increased between 2015-2019. The

increased opportunities provided by Russia and the EU were also instrumentally used by the different domestic actors in their political struggle.

From the EU perspective, the collision of public and private interests is also perceived as the key obstacle for institutional change in Moldova. It is important that prior to the “theft of the century” the support to Moldova increased from 40 million in 2007 to 131 million Euros in 2014. However, the lack of reforms became obvious during the 2014-2015 banking scandal, which led to financial instability the interruption of budget support in 2015 (Council of the European Union, 2018). In 2016 following the signing of an Agreement with the International Monetary Fund (IMF) in 2016, in December 2016 the EU unblocked the budget support of tranches of 45.3 million Euros, which included the first and second tranche of the Judicial Budget Support adopted in 2012 and the VLAP support budget support programme (Cancelaria de Stat a Republicii Moldova, 2017). In addition, in 2017 the EU and Moldova signed a macro-financial assistance programme, composed of a loan of 60 million Euros and a grant of 40 million Euros. This support was made conditional on the “fulfilment of 28 sectoral policy conditions” and on political pre-conditions, “in particular with regard to the electoral system, the rule of law and human rights” (Emerson and Cenuşa, 2018: 135).

However, these conditions were not met and the Council Conclusions from February 2018 expressed “regret that the new electoral law did not address some of the key recommendations of the Venice Commission” (Emerson and Cenuşa, 2018: 135). As a consequence the first disbursement of the macro-financial assistance was put on hold in June 2018. The reasons for this was the decision of the Supreme Court to invalidate the mayor elections in Chisinau won by Andrei Nastase. This Court decision was criticised by domestic and international actors as the EU and USA (Tanas, 2018). Furthermore, in 2017 and 2018 the EU assessed the compliance with the budget support conditions for Moldova and a “tranche of 28 million Euros for the justice sector support was cancelled due to lack of progress” (Emerson and Cenuşa, 2018: 135). The European Council pointed to the “risk that majoritarian candidates may be influenced by businesspeople or other actors who follow their own interests” (Council of the European Union 2018: 3).

This criticism shows how oligarchs may perceive the EU-supported reforms as a “direct threat to their political and economic interests and thus primarily aim the preservation of the institutional status-quo” (Nizhnikau 2017: 110). In summary, after 2016 the EU effectively applied negative conditionality to Moldova and mobilised real and credible political conditions for compliance in the field of Rule of Law. In normative terms the criticism of the European Council clearly identified the informal links between business and institutions and even

assessed negatively a judicial decision, which in other contexts could be seen as interference. The EU has stepped up its value promotion with credible negative conditionality.

In November 2018 the EU decided to recalibrate the funding provided to Moldova, by redirecting “support to projects that have a direct, positive impact on Moldovan citizens” (EU Delegation to the Republic of Moldova, 2018). The financial support amounted to 106 millions Euros for the period 2017 and 2018 and would focus on regional socio-economic development through support to SME, civil society and local authorities, confidence-building between Tiraspol and Chisinau, the electricity connector between Moldova and Romania, and programmes as Erasmus + and Horizon 2020 (EU Delegation to the Republic of Moldova, 2018). Therefore, the EU redirected the support from the state and Chisinau to citizens, business and CSO increasingly outside Chisinau. Therefore, financial support has been used as significant leverage against a discredited and captured state institutions.

In contrast, the establishment of the ACUM-PSRM government in June 2019 was accompanied by key measures for the development of the required Rule of Law reforms. The criticised electoral reform was reversed, an investigative commission for the bank fraud was set up and measures for de-politicising the judicial and law-enforcement institutions were adopted. As a consequence of these measures as soon as July 2019, the EU provided 14.54 million Euros of Budget Support for implementation of the DCFTA agreement, the Vocational Education Training and the VLAP (European Commission, 2019f). Furthermore, in October 2019 the EU concluded that political pre-conditions for the disbursement of 30 million Euros of macro-financial assistance to Moldova have been achieved, including “measures taken to fight corruption and money laundering, to foster greater transparency in public finance management, to modernise the country's public administration, to advance the ongoing reforms of the energy and financial sectors and to improve the business environment” (European Commission, 2019b). In addition, the 18 October 2019 the European Commission approved an additional amount of 14.35 million Euros of Budget support programmes in the Energy sector, Police reform and public finance policy reform. The compliance with political pre-conditions is partially the reason for achieving these disbursements. In particular, the reform process has advanced towards the development of a draft law on the reform of the Supreme Court of Justice and the legislation on the Prosecutor General, which had not been addressed before. The Venice Commission supported the development of these laws (European Commission, 2019e). The dissolution of the ACUM-PSRM coalition did not lead to any change in the political conditionality, which is subject to the progress of the Rule of law reforms.

In conclusion, the discovery of the corruption scandals of the pro-EU government and intervention of international actors (both the EU and Russia) with normative and financial support significantly changed the trends of political competition in Moldova. Increased geopoliticisation of domestic discourses reflects the differential empowerment of pro-EU and pro-Russia domestic actors, at the cost of PDM isolation. This has led to a conformation of new government composed of pro-EU and pro-Russia political parties, which appeared to challenge the geopolitical conflict. Therefore, this presumably weak coalition has prioritised the end of the political control of the institutions by the PDM, which appears to be a valuable incentive in their preference fit calculations. However, this reform process proved to be short-lived due to the conflict between PAS and ACUM regarding the nomination of the Prosecutor General, which proves that the control of key institutional position is an essential asset in domestic actors' cost-benefit calculations and a key challenge for the progress of the reforms.

The geopolitical evolution of the domestic preferences also needs to be observed, given that since 2019 both the EU and Russia provided increased benefits to domestic parties. As proved to be essential ACUM and PSRM remained competitors in domestic and geopolitical terms. This was illustrated by the mayor elections in Chisinau, which showed the increased support of the PSRM candidate (52%) against the previously victorious Andrei Nastase (48%). Less than a month after this election, the PSRM and PDM voted no-confidence to the Maia Sandu, and ended the coalition agreement. In terms of EU support, it is reported that the budget support allows the politicisation of the EU support, as a political gesture in order to provide motivation for reforms in Rule of Law (Interview 83). The strict conditionality applied in 2017-2018, is argued to be a key element for change in the reform process (Interview 74).

## ***VI. CONCLUSIONS AND IMPLICATIONS FOR FREEDOM AND EQUALITY***

The high levels of corruption, political party fragmentalisation and the intertwining between state, party and economic interests in Moldova provide a clear example of the way in which equal access to Justice is not guaranteed. The cases of selective justice and prosecution which dominated the political system between 2011 and 2019 illustrate prove that the control of public institutions and their instrumental use for achieving the political goals of wealthy oligarchs can lead to vulnerability of citizens and state officials. The institutional system in Moldova has been repeatedly defined as state captured, due to its subordination to individualist goals of oligarchic structures. This situation leads to extreme inequality in the access of citizens to public institutions, due to their impossibility to defend their interests and count on the equal compliance of the law. When judicial and law enforcement institutions apply the law at the

service of the interests of the governing party, citizens' rights are not a priority and can be violated. As a consequence the public trust in Moldova's Judicial and law-enforcement bodies has decreased in the last decade. In January 2019 only 16% of interviewed reported trust in the Judiciary, 18% in the Prosecutor's Office, 15% in the Parliament and 11% in the executive. In addition, the public trust in these institutions fluctuates according to the political environment of the country. In this way, in October 2016 only 8% of the surveyed trusted in the Judiciary (Institutul de Politici Piblici, 2019). These public perceptions of the institutional framework are the result of the instrumental use of these institutions by oligarchic and political actors, in a state capture, where ordinary citizens are in a vulnerable and unequal position.

The weak institutional, legal, societal and professional accountability renders the Rule of Law in Moldova ineffective. The causal mechanism involved in the Rule of Law reform process in Moldova are summarised below in Table 5. The external independence of the Judiciary and the Prosecution is very limited given the informal trends of distribution of the high positions of these institutions among political parties. In addition, individual independence of Judges and prosecutors is very limited given the possibility of the SCM to adopt non-substantiated decisions in breach with the recommendations of the Judges Selection and Career Board. Selective justice after the approval of the SCM has also been acknowledged as a common strategy used against judges and state officials. This high level of state capture and of instrumental use of institutions in benefit political and economic elites essentially distorts the democratic institution against the basic principles of Rule of Law as impartiality and equal compliance with the law.

In addition, this development is in opposition to one key element of the minimalist definition of democracy - the requirement that the democratic institutions "are not subject to or conditioned by non-elected parties or exponents of other external regimes" (Schmitter & Karl 1992: 45 quoted in Morlino, 2011: 30). The fact that Plahotniuc did not occupy any official position and that the PDM managed to control the legislative, in spite of having only 19 MP illustrates this dynamic. In addition, the distribution among governing political parties of key institutional positions as the Prosecutor General, and the main anti-corruption bodies is an essential rejection of their impartiality and of governmental accountability. The cases on institutional resistance to the reform processes in the Judiciary and Prosecution acquire different meaning when it these institutions are politically controlled. Therefore, behind the institutional resistance stands essentially a political resistance of the governing elite. Consequently, the trends of competition and participation dominate the weak institutional framework, rendering insignificant and toothless the reform processes in Rule of Law.

The affiliation network of the Commission set up for the implementation of the strategy between 2012-2015 confirmed the dynamics regarding the institutional and political struggle described by members of this process. Specifically, the Commission was a key platform for negotiation between the Judiciary and the executive, mainly the Ministry of Justice. No members linked to the Parliament were involved in this Commission, which however affected negatively the reform process, given that key steps of the reform were not adopted due to the lack of approval of AEI members in the Parliament. The importance of this aspect is reinforced given that the Ministry of Justice was controlled by one party PLDM, while institutions as the Prosecution and the Anti-corruption Agency were controlled by the PDM.

Furthermore, the lack of political will led to the adoption of strategic and policy documents of the Rule of Law reforms, which however did not lead to institutional development or internalisation of the norms. These conditions still give space for political influence on the Judiciary from the executive, in addition to the lack of impartiality of individual judges. This lack of democratic deepening and entrenched political inequality reinforces the lack of trust of the citizens towards the institutions. In Moldova, like in Armenia and Georgia, the influence of the EU support has concentrated on the creation of comprehensive and inclusive reform strategies in the initial stages, which however have not been developed as relevant norms and independent institutions have not been set up. In this sense, it is paradoxical that Moldova is the country which for a long period received the highest amount of EU support. The challenges in the case of Moldova are linked with the effective capture of the political parties and state institutions by oligarchic circles that are not willing to weaken their grip over the institution.

The lack of overlap between the preferential fit of dominant domestic groups with EU promoted reforms due to the potential loss of power, made impossible the advancement of such reforms in spite of the economic incentives and socialisation efforts of organisations as the EU and the CoE. Like in Armenia, the impossibility to influence policy-making through formal decision-making processes has led to the creation of opposition movements that effectively recur to unconventional participation and led to the consolidation of an alternative pro-EU party. Differential empowerment by foreign actors in Moldova was key for the effective transformation of the party system in the last four years. In this sense, the EU provided support to effectively reform-oriented parties as ACUM, while Russia unequivocally supported the initiatives of the PSRM. Both political parties have effectively used this foreign support both in discursive and material way for reinforcing their strategies. The difficulty in the case of Moldova is predefined by the party fragmentation and the impossibility to create a sustainable

coalition that would commit to political reforms in a sustainable way. The opportunities of the competing alternatives of the EU and Russia have been also skilfully managed by Moldovan elite. The party fragmentation has allowed different political parties to identify with the different foreign policy alternatives. In this context the competing regional alternative are conceived as opportunity structures which feed into the alternatives considered by the domestic elite. However, it is important that these innovative strategy also imply greater instability.

Therefore, from this perspective the size and credibility of external incentives feed into the preferential fit calculations of the political elite in Moldova which aims to retain power and control of the institutions, while expanding its legitimacy and access to material resources provided by the EU. This balance of the preferential fit shows that in certain occasions, when 'fake compliance' takes place, external incentives are instrumentally used by domestic elite for their informal political goals, contributing in this way for the formal advancement of reforms (at strategic level). However, these reforms are challenged or stalled if they threaten the power positions of important domestic elite. Like in Armenia and Georgia, the control of key institutional positions and the nomination of supportive Judges or officials is perceived as an essential incentive for domestic political actors. In addition, the behaviour of Plahotniuc and the PDM strategy when faced with strict conditionality by the EU, shows how valued is the power control by oligarchic circles that are unwilling to adopt reforms that can damage its grip of power. The reduced resources for the state budget did not prove to lead to behaviour or priority change in the PDM-dominated coalition in the period 2017 and 2018.

Against this background international actors have used mainly their leverage. When the AA was signed, Russia reduced Moldova's access to economic incentives as trade, migration and in parallel supported referendums on EU or EEU membership. On the other hand, the EU applied strict conditionality when reforms were formally applied, while corruption scandals and state capture led to protracted political crisis. These events and the differential empowerment of domestic actors by the EU and Russia has led to the redefinition of the party system in Moldova. These events allowed the conformation of a very unstable and unexpected coalition between pro-EU and pro-Russia forces in the executive and legislative with the goal to fight state capture and re-establish the Rule of Law. The increased incentives provided by the EU and Russia have on the mid- to long-term led increased competition between these forces. If this competition intensifies in the future, before Rule of Law norms are adopted, developed and internalised, state institutions might become once again a political instrument in the hands of competing political groups in the struggle for power.

Independent variable	Contextual propositions - 2012	Causal proposition 2012 - 2016	Outcome 2017-2020
Secessionist conflicts in Gagauzia and Transnistria	2000 – 2009 Democratic weakening under the PCRM	<ul style="list-style-type: none"> <li>- Increased funding for the judiciary and independence entrusted to the SCM.</li> <li>- New <b>SCM</b> composition changed, but the <b>executive remains involved</b></li> <li>- The <b>JSCB</b> established, but the <b>SCM can ignore it without any substantiation</b></li> <li>- <b>5-year probation period</b></li> <li>- 2013-2014 positive changes are list of disciplinary offences, additional sanctions, while <b>disciplinary proceedings</b> have cumbersome and non-accountable procedure</li> <li>- Criminal prosecution of judges (with SCM approval) allows <b>selective justice</b></li> <li>- Judicial map reformed with CSO support in 2015 – from 44 to 15 courts</li> <li>- NIA “lack of an adequate legal framework and insufficient resources</li> <li>- <b>NAC accountability</b> shifted to the executive, concerns on <b>high-level corruption</b>.</li> </ul>	<p><b>Corruption scandals</b> revealed, ACUM-PSRM reviews key institutional nominations and reforms. Coalition <b>breaks because of Prosecutor General nomination</b></p> <ul style="list-style-type: none"> <li>- Overlapping roles of anti-corruption institutions</li> <li>- no applicants for NIA, even with high salaries</li> <li>- <b>Selective justice</b> increases after 2016 in investigation, prosecution and even conviction.</li> </ul>
Fragmented national identity Complex, fragmented party system	<p><b>Political competition</b> Oligarchic and personalist parties used as tools. 2010 Economic support shift from the PCRM to the AEI. Integration of informal networks, parties, institutions.</p>	<p>Broad support in the Parliament to the Strategy. AEI <b>fake resonance</b> with RoL - <b>secret annex for independent institutions</b>. The PLDM in the MoJ, the PDM nominated the Prosecutor corruption = <b>institutional resistance is also a political resistance</b>. <b>The Reform Commission as space of negotiation between the government and the executive, but the Parliament does not approve key aspects</b> &gt;&gt; Week implementation due to <b>Judicial resistance</b>. The Prosecution reform stalled. Conflict AEI 2013-2015 = reforms stall and laws adopted by an emergency procedure. Episodic PDM-PSRM cooperation, as they have common origins.</p>	<p>PDM controlled competition and then isolated. <b>ACUM</b> emerges as pro-EU reform-oriented party. <b>PSRM</b> - pro-Russia party <b>PAS-ACUM-PSRM coalition overcomes geopolitical barriers</b> for 6 months and dissolves due Prosecutor General nomination. Parallel reform commissions established by PM and President.</p>
	<b>Limited social participation</b>	<p>Concerns of CSO not tackled. CSO support the presence of a reform-oriented Minister of Justice in the SCM 2015 CSO uncover the “theft of the century” &gt;&gt; Social protests become dominant in 2015-2016 &gt;&gt; the government tries to control and limit civil society and participation.</p>	ACUM emerges after the protests
Eastern Partnership policy	Comprehensive and inclusive strategy is a condition for AA/DCFTA, VLAP, and budget support	<p><b>Differential empowerment of ACUM;</b> Critical opinion of Venice Commission&gt;&gt;<b>negative unsuccessful</b> conditionality to PDM, <b>Draft prosecution law not adopted conditionality for EU budget support</b>. Moldova received the highest amount per capita from all the EaP and 2014 AA signed EED-supported journalists uncovered the 1-billion theft</p>	<p><b>Successful conditionality and differential empowerment of ACUM elite.</b> Loss of trust in the EU due to its support in the past to corrupt leaders.</p>
Russia military and economic leverage	Corruption scandals involving Russian money laundering.	<p><b>Russia empowers PSRM</b> through normative support and increased incentives Pro-Russia actors show disagreement with the AA- referendum in Gagauzia, Transnistria show normative superiority on democracy.</p>	Closer relations established by Igor Dodon and PSRM

Table 4. Causal mechanisms in Rule of Law Moldova 2012 - 2019

## **PART III INTER-CONSTITUTIONAL ACCOUNTABILITY**

## ***VII CHAPTER. ARMENIA***

### ***I.I. INTRODUCTION***

This chapter studies the reform processes in the field of Inter-Constitutional Accountability in Armenia, Georgia and Moldova. The reforms discussed are the fundamental amendment of the Armenian Constitution that changed the system from semi-presidential to parliamentary (2013 – 2016), the Constitutional reform in Georgia from presidential to parliamentary system (2008-2014) and the Constitutional Reform from a presidential to a parliamentarian system in Moldova (1999-2000), as well as the 2016 decision of the Moldova's Constitutional Court to abolish the indirect Presidential election. As this reform processes indicate the dominant trend in post-Soviet countries in the beginning of the transition was to adopt a presidential or a semi-presidential model, with the sole exception of Moldova, which (apart from the Baltic states) is the only country to install a parliamentary system. However, the reform processes selected represent the change of this trend, as Armenia and Georgia adopt a parliamentary regime, while Moldova's Constitutional Court reversed the indirect Presidential election. These reform processes provide insight on the causal mechanisms that influence their evolution and outcomes. In addition, the deepening of democratic qualities in post-Soviet countries is affected by the legacy of strong, personalist presidential system that dominates the other institutional branches. Furthermore, the connections between the formal institutional structure and informal neopatrimonial networks weaken the reform processes.

This chapter argues that the trends of domestic competition are the key element that defines the institutional design and its performance. Therefore, the process-tracing and the network analysis included in the research support a social constructivist claim over an institutionalist perspective. It is, thus, argued that a three-step causal mechanism evolves from the contextual conditions that define the features of the domestic actors at key positions. Subsequently, these actors use the framework of opportunities provided by domestic and international institutions for changing the trends of competition and adapting the institutional framework according to their preferential fit. The chapter firstly introduces the criteria for assessment of the reforms' outcomes and subsequently analyses the individual case studies. Analytical conclusions bring the chapter to an end.

### ***I.II. CRITERIA FOR ASSESSMENT OF THE REFORMS***

Accountability is “the responsibility governors have to answer to other institutions or collective actors that have the expertise and power to control [their] behaviour” (Morlino, 2011: 199). In practice accountability refers to the limits that citizens impose on the exercise of power

in representative democracies via electoral and inter-institutional procedures. Inter-institutional accountability denotes horizontal and equal relations between the government and other institutional or actors (O'Donnell, 1994a; Morlino, 2011). Such power is exercised in the classical terms of check and balances between the executive, legislative and judiciary, but also recurs to “various overseeing agencies” that can seek political, “governmental, legislative, bureaucratic, judicial and military accountability” (Schedler & Diamond 1999: 22, 39).

Accountability comprises three key components – “information, justification and punishment/compensation” (Schedler & Diamond 1999: 15). Information and justification are conceived as public answerability, which implies the dialogic relationship between actors and the “right to receive information [and explanation] and the corresponding obligation to release all necessary details [and the duty to justify ones conduct]” (Schedler & Diamond 1999: 15). Depending on how satisfactory this inquiry is, it will be rewarded or punished by the overseeing body. The enforcement capacity is essential for guaranteeing effective results in terms of inter-institutional accountability, as “toothless or diminished forms of accountability” are “acts of window dressing rather than real restraints on power” (Schedler & Diamond 1999: 16). As O'Donnell's shows horizontal accountability is “the existence of state agencies that are legally enabled and empowered, and factually willing and able to take actions that span from routine oversight to criminal sanctions and impeachment in relation to actions or omissions by other agents or agencies of the state that might be qualified as unlawful” (O'Donnell 1999: 38). Consequently, this research differentiates between information/justification and enforcement elements in order to identify the actual obstacles for effective accountability.

Inter-institutional accountability comprises the following sub-dimensions: legislative-executive relations; control exerted by the Constitutional or Supreme Court; Ombudsman; Plural and independent information; and modes and extent of decentralization (Morlino, 2011). This research focuses on the reforms in inter-constitutional accountability as the legislative-executive relations, the control of the Constitutional Court, as well as on their contribution for strengthening the substantive dimensions of equality and freedom. The access to plural and independent information and the decentralised administration will be considered in a complimentary way when they are relevant to the reforms.

Inter-constitutional accountability is closely linked with the separation of powers in representative democracies and the constitutional tradition developed in the last three centuries. Behind the institutional developments of presidential, semi-presidential and parliamentary democratic models intertwine three political traditions – democracy, liberalism and republicanism, which pursue different political goals. O'Donnell develops this aspects, when

he clarifies that accountability should concern three types of violations: against democracy (as “freedom of association or [...] electoral fraud”); against liberalism (as violations “against liberal freedoms and guarantees”) and against republicanism (when state officials do not “subject themselves to the law and/or [do not] give determinate priority to public interests, [but] to private ones”) (O’Donnell 1999: 38). In summary, accountability affects democratic equality, liberal freedoms and the republican value of public good. The main checks and balances between executive and legislative are developed on the basis of these three traditions. For O’Donnell, there are two key channels for the violation of accountability that reflect liberalism and republicanism: “the unlawful encroachment of one state agency upon the authority of another” and corruption (O’Donnell 1999: 41).

The relations between legislative and executive branches are closely linked to the distinction between presidentialism and parliamentarianism as models that prioritise differently the power and control function of the executive and the legislative. The parliamentarian system is the product of the historical evolution firstly in Britain and later in other European states. The definitions of parliamentary democracy overlap in the following elements: the existence of dual executive, which detaches the role of the head of government from the head of state; “the parliament has formal or informal investiture powers” and “means of control (interpellations, committees of inquiry, etc.) over the cabinet” and can “force the cabinet to resign” through majority voting, which “is in most cases balanced by the Prime Minister’s power to dissolve the parliament” (Strom et al. 2003: 9-10). In addition, the “cabinet is a collective decision-making body” and “the ministers are usually also members of the parliament” (Strom et al. 2003: 9-10). Another essential feature is that the parliament is “the only democratically legitimated institution”, while the government derives “its authority from the confidence of the parliament” (Linz & Valenzuela 1994: 5).

Presidential democracy, on the other side, was the “product of the deliberate institutional design” in the United States that was inspired by the principles devised by Montesquieu in the “Spirit of the Laws” (Montesquieu 1752; Strom et al. 2003: 6). Unlike the parliamentary system, the democratic legitimacy is embodied in two institutions that are directly elected by the citizens – the president and the legislature. They both enjoy an independent tenure for a fixed term, without any vote of confidence conditionality. In addition, the president is the head of state and head of government and enjoys “full control of the composition of his cabinet” (Linz & Valenzuela 1994: 6). In some cases the president also has a law-making authority and the approval of legislative initiatives requires complex coalition-

building in the Parliament. The judiciary is the main authority that defines the unlawful encroachment of one institution upon the authority of the other (Shugart and Carey, 1992).

Lastly, the combination of features of the two political regimes defines a third type of political system – semi-presidential. Duverger identified this setting based on the French Republic in the 1960s. Its main features are: the popular election of the president, who has “quite considerable powers; he faces a cabinet that has executive powers and “can stay in office only if the parliament does not show its opposition” (Duverger 1980: 166). The lack of specificity of the “quite considerable powers” of the president is very problematic in this model.

Therefore, it is important to analyse the legal development and implementation of inter-constitutional accountability in these three democratic models. The political reforms studied in this chapter, will be analysed in order to define what is the institutional configuration and the balance between the different power branches in terms of their governing mandate. Consequently, the following aspects will be considered:

- Which is the main actor of the political system in terms of democratic legitimacy – the executive (presidency and cabinet) or the legislative?
- How are they chosen and by whom? Which actors have nomination or veto powers?
- What are the powers and obligations of dismissal of the different institutions? Who can dismiss the Parliament, the President and the Cabinet (or specific ministers)?
- What are the conditions and requirements for such dismissal? What are the possibility and requirements for a confidence vote; collegiality (or not) of the executive?
- What restrictions exist on the powers to dissolve (Strom, Muller and Bergman, 2003)?

Secondly, the relative capacity of the executive and legislative to influence the regular cycle of decision-making is essential element of the balance between institution:

- What are the roles of the executive and legislative in the different decision-making stages – initiation, drafting, discussion, adoption, and implementation?
- Does the executive have the capacity to issue decrees without legislative delegation?
- Are there reserved policy fields for the executive, in which the legislative cannot act unless the executive initiates a reform? What are the veto powers of the executive/legislative and how can they be overridden?
- Which institution leads the process of constitutional reforms and of proposal of referenda (Shugart and Carey, 1992)?

- What are the requirements to provide information and to involve the legislative in the executive activity: through questions (oral, written, urgent), requests for documents and the obligation to provide information and reports?
- Existence of parliamentary committees, their composition and their rights of inquiry of the executive (Strom, Muller and Bergman, 2003)?
- What are the discretionary powers of the executive to nominate key figures in the institutional system as cabinet ministers, members of the Supreme Court, Constitutional Court, Prosecutors Office, the military etc. (Siaroff, 2003)?

In addition, the dimension of interinstitutional accountability is closely linked to the political competition and participation, as it requires the presence and effective functioning of intermediary structures as political parties, civil society organisations and media. These features have a decisive influence on the actual relevance of the accountability mechanism and the quality of democracy. For instance, if the opposition in the parliament does not reach the majority required for exercising its veto or legislative powers, the formal interinstitutional mechanisms described above will be useless. The dimensions of participation and competition and the degree to which citizens have equal rights and freedom to effectively participate and compete in the political arena, are essential for the substantive dimension of equality. Consequently, any kind of effective impossibility to access the political decision-making by the citizens or the opposition is considered to affect negatively citizens' equality and freedom (Schmitter, 2004). The consideration of these substantive dimensions corresponds to the democratic, liberal and republican values described above.

Connectedly, a key element of the minimalist definition of democracy is that democratic institutions “are not subject to or conditioned by non-elected parties or exponents of other external regimes” (Schmitter & Karl 1992: 45 quoted in Morlino, 2011: 30). The indication of more or less direct influence of non-elected actors on formal decision-making, weakens the quality of democracy and the equal right of participation and competition. Furthermore, it would imply the lack of significance of the institutional mechanism accountability and would undermine their legitimacy. Such would be the case of influential political personalities and economic groups that exert influence outside the formal decision-making procedures. Lastly, interinstitutional accountability depends on the Rule of Law. The degree to which norms are implemented and internalised, constitutes a relevant indicator of the institutional framework and the equality and freedom it provides (Schedler and Diamond, 1999; Morlino, 2011).

### ***II.1. CONSTITUTIONAL REFORM PROCESS IN ARMENIA (2013 – 2018)***

The institutional system in Armenia until 2013 followed a mixed premier-presidential model, which led to significant power centralisation and disbalances. The purpose of the Constitutional reform initiated in 2013 to improve the “constitutional mechanisms, to ensure the application of the principle of the rule of law and to guarantee fundamental human rights and freedoms, to secure the full balance of powers and improve the efficiency of public administration” (President Republic of Armenia, 2013). In addition, the institutional framework had to be adapted in line with democratic principles, as the inclusion of the list of human rights, the abolition of the death penalty and the introduction of the Ombudsman figure. It was also pointed out the “acceptance in the academic cycles that the 1995 and 2005 systems were disbalanced and could create problems for the governability in a country as Armenia, which is in such a sensible region” (Interview 10). The work of the Constitutional Commission (CC) developed between September 2013 and April 2014. Its work was described as an open-ended process, without any pre-conception or consensus on the institutional system.

The outcome of the drafting process was presented to the President in April 2014 as an analytical and programmatic text that set out the main challenges of the system and suggested general solutions (Venice Commission, 2014a). The draft concept reiterated the need to guarantee the balance between and the independence of the different branches of power. It suggested the adoption of a Parliamentary model, focusing on “the stability of the government, the oversight powers of the parliament, the parliamentary minorities, and the functions and election procedure of the President” (Venice Commission, 2014a). The Draft Concept also suggested additional stability measures, as the German constructive vote of no confidence and a stronger Prime Minister. The President would be a mediator and guarantor of stability, and would be elected by the National Assembly or an electoral college. Organic laws adopted with qualified majority would enhance the role of the opposition. Following the German example, investigative commissions would be introduced, and key officials (Central Electoral Commission, Chamber of Control) would be elected by three fifths of all MP. The executive would be unified under the Prime Minister, without any possible confrontation with the President. The supervising role of the Parliament and the opposition’s rights will be strengthened, which would empower political parties (Venice Commission, 2014: 12-18).

The draft suggests the inclusion among the competences of the Constitutional Court the resolution of “disputes between constitutional bodies regarding their [...] powers” (Venice Commission, 2014: 19). The draft emphasized the need to guarantee the institutional balance and the consistent implementation of the “system of values underlying the Constitution” and

“ensuring constitutionality of the country” (Venice Commission, 2014: 22). For this purpose, it is required to provide “constitutional guarantees for preventing perversion of the system” and the “preconditions for bridging the practice of constitutional law enforcement in line with the Constitution” (Venice Commission, 2014: 22). The draft recognises the need to eliminate discrepancies “between the Constitution, the legal system and the practice of law enforcement” through the “constant diagnosis and monitoring of the [...] constitutional legality and constitutionality” (Venice Commission, 2014: 22). In spite of these references to traditional tasks of the Constitutional Court, the institutions in charge would be the President, National Assembly, civil society and constitutional education.

The Constitutional concept established that the “accession to international organizations resulting in partial restriction of state sovereignty is subject to referendum” (Venice Commission, 2014b: 12). In addition, the regulation of issues that “may not be put to a referendum”, and the “referendums by civil initiative” was added (Venice Commission, 2014b: 12). The concept suggested the regulation of local self-government, by “revising the procedure for dismissal of community mayors”, and increasing the supervisory powers of the Council of Elders (Venice Commission, 2014: 16). However, the concept did not provide details regarding the elected governors, rather it focused on the centrally nominated governors.

This draft concept shows the lack of definition of key issues, as the Constitutional Court, while the relations between legislative and executive and the referendum on international organizations were clearer. The President Sargsyan expressed his support of the “present form of government” and stated that even if his own vision was not of parliamentary model, he would leave the decision to the public debate. Importantly Sargsyan declared that he would not run for President or Prime Minister in the future, as he “strongly believe[s] that one person should not pretend to be on the helm of the state in Armenia for more than two times in his lifetime” (President of the Republic of Armenia, 2014). This public declaration and his nomination for Prime Minister in 2018 will eventually lead to the Velvet Revolution.

The process continued with public discussions organised by civil society organisations (Apella), political parties (Armenian Revolutionary Federation), international organisations (USAID, EU, OSCE, GIZ) and embassies. The Commission, however, considered such contributions only after the final draft of the amendment was issued. The October 2014 Venice Commission opinion emphasized that the Presidential election by the Parliament “should receive careful consideration as the people [...] may feel deprived of a right” (Venice Commission, 2014b: 6). The competences of the President would need to be developed,

including his foreign policy role, and capacity to sign decrees, as well as the possibility for individuals to challenge the constitutionality of legal acts (Venice Commission, 2014b).

The first draft of some Chapters was published in July and amended according to the Venice Commission's opinion. After the publication of the complete draft in August 2015, the second Venice Commission opinion discussed just the remaining questions, given that "many of the comments and recommendations [of the Venice Commission] rapporteurs [...] have been taken into account [...] and have resulted in the revision of the draft amendments" (Venice Commission, 2015: 3). The main innovation was the change from semi-presidential to rationalised parliamentary system. The President is selected by the National Assembly, while a set of diminishing majorities prevent institutional deadlock. A procedure which included a College of Electors was initially suggested, but deleted after the Venice Commission noted that it "might to lead to behind-the-scenes manipulations" (Venice Commission, 2015: 20). The competences of the President are significantly reduced, and the government is the centre of authority. The Presidential decrees (with few exceptions) need to be countersigned by the Prime Minister or the Minister in charge and even in foreign policy his prerogatives are shared with the government. The Prime Minister leads the National Security Council and the Government is in charge of the Ministry of Defence. The Government is a collective decision-making body and the resignation or no-confidence applies to the entire cabinet.

The National Assembly adopts laws by a simple majority, while on certain topics three fifths of all votes are required. Specific rules for minority protection are the right to nominate a deputy Chairperson of the Assembly, the proportional distribution of members in the Committees and the possibility to establish inquiry committees by one fourth of all MP. Interpellations can be initiated by a political faction, while one third of the deputies might seek a vote of no-confidence, which later needs a majoritarian approval. The constructive vote of no-confidence was included with a simplified procedure, following the recommendation of the Venice Commission. The legislative initiative includes individual deputies. The Parliament adopts and supervises the implementation of the State Budget, after its presentation by the government. The President cannot dismiss the government or the National Assembly anymore.

The members of the Constitutional Court are elected by three fifths of all MP, increasing in this way the opposition's veto power. Three members of the Constitutional Court are nominated by the President, three by the Government and three by the Assembly of Judges. According to the Venice Commission, this distribution "provides for the necessary democratic legitimacy" of the Court (Venice Commission, 2015b: 8). However, the trends of domestic competition could allow that the members nominated by the President and the Parliament are

representative of the dominant political party. The right to apply to the Court has also been extended to “everyone – in a concrete case when there is a final act of court” (Republic of Armenia, 2015: Art. 168). However, the prerogatives of the Court include the “termination of the powers of a deputy”, implying “the assessment of facts” (Venice Commission, 2015b: 9).

The changes in the field of media regulation introduced are also seen as a positive development. The Constitution provides for the independence and impartiality of the Commission on Radio and Television Broadcasting. Its members are not anymore selected by the President, but are nominated by a special committee and can be elected or dismissed by three fifths of the Assembly. The Venice Commission criticised the inclusion of the requirement for “political restraint in public speeches”, as a “new risk for the independence” of the body, because it may lead to arbitrary dismissals (Venice Commission, 2015b: 9). Lastly, the final text did not include any changes in the local self-government and the balance of power between the governors (nominated by the Government) and the elected local authorities.

The Venice Commission concluded that the Draft Constitution “is of extremely high-quality”, “in line with international standards” and that “the Armenian political and legal culture [...] has now achieved a remarkable level of maturity” (Venice Commission, 2015a: 15, 4). However, this positive assessment of the Venice Commission contrasted with the negative domestic campaign against the Constitutional change, which led to criticism of the civil society against it. The Venice Commission limited itself to encourage the dialogue and consensus on the reform. As a result, domestic criticised the prioritisation of an institutionally-centred analysis, while ignoring the trends of participation and competition. Lastly, the Draft Constitution was adopted and the date for the referendum was defined the 05 October, by 104 deputies. Only 10 MP voted against and three abstained (Protection of rights without borders, 2015). The 06 December 2015 the new Constitution was adopted with the support of 63,35% of voters in the referendum with 50,51% of electoral participation (OSCE/ODIHR, 2019).

## ***II.II. IMPLEMENTATION OF THE REFORM***

The 2017 parliamentary elections were held according to the rules established in the new Constitution and led to an important RPA victory (58/105MP). The Prosperous Armenia Party (PAP) was represented by 31 MP and Armenian Revolutionary Federation Dashnakutyun (ARF) by 7MP. A new pro-EU coalition “Way out Alliance” reached 9 MP, comprised the Civil contract party (linked to the 2013 protests), Bright Armenia (led by Edmon Maroukyan) and the Hanrapetutyun Party. As a consequence of this election the incumbent coalition RPA-PAP-ARF reached 96 MP. Credible reports on a sophisticated system for controlled vote reduced the credibility of the 2017 elections (OSCE/ODIHR, 2017a).

In April 2018 Serzh Sargsyan broke his promise given in 2014 and was nominated as a candidate for Prime Minister. His election in the Parliament as Prime Minister the 17 April 2018 triggered what latter was termed the Armenian “Velvet Revolution”. The meeting for the selection of Sargsyan for the PM position was held outside Yerevan due to the social protests that emerged spontaneously in the capital. The 31 March the leader of Civil Contract, the journalist and editor Nikol Pashinian, started a march from Gyumri to Yerevan under the slogan “Take a Step, reject Serzh!”. As the protest movement gained support, different political leaders and citizen initiatives argued for Pashinyan’s nomination as Prime Minister. The protests became so overwhelming, as they received support from diverse social groups as 200 soldiers and representatives of the Church (Reuters, 2018).

In addition, the protest strategy focused on peaceful, decentralized and uncoordinated actions, which limited the capacities of the police. The movement was not only limited to the capital, but involved the provinces. In addition, as the Commemoration day of the Armenian Genocide approached (23 April), Sargsyan announced his resignation. The 8 May Pashinyan was supported by the Parliament and elected as new Prime Minister. RPA and PAP deputies were forced by the pressure of the social protests to support his candidacy. The Parliament was blocked by protesters in order to guarantee his election. This process showed to what degree the institutional process had lost legitimacy to the unconventional participation in the country.

New elections took place the 09 December 2018 and gave a majoritarian victory to My Step Alliance (88 MP). PAP continued being the second force with 26 deputies and Bright Armenia secured 18 MP. Therefore, the formerly dominant parties RPA and ARF Dashnakyutsun had lost voters’ support as they did not pass the 5% electoral threshold. Consequently, Armenia’s political elite was renewed as 76.5% of all the MP are elected for the first time and the median age is 40 years (EVN Report, 2019). A majority of the current deputies are to great extent representatives of the social movements that emerged in the last decade. For instance, many members of My Step and Bright Armenia are former CSO employees and journalists (168hours, 2019a). It is important to note, however, that the same trend of sur-plus majority remained. Currently, the PAP is the only opposition party, given the past alliance between Bright Armenia and My Step. The important majority of My Step Alliance in the Parliament is a challenge for the effective inter-institutional accountability between the Government and Parliament.

The deep conflict between the RPA and My Step elite was manifested in the debates surrounding the nominations in the Judiciary and other independent bodies. One of the most polemic cases refers to Vage Grigoryan, the lawyer who represented the families of the victims

of the 1 March 1998 protests to the ECHR and was elected in 2018 as member of the Constitutional Court. During his nomination speech in the Parliament, he challenged the positions of six members and the President of the Constitutional Court, because they were selected before the 2017 Constitutional amendment. My Step PM supported these calls for the resignation of six members of the Constitutional Court. They also framed these claims in terms of the Transitional Justice Strategy, which would address the (dis)continuity of the careers of the judges that have benefitted from corrupt or politically influenced nomination during the RPA government (Saribekian, 2019a). The Prime Minister Pashinian also “implicitly demanded the resignation of those” judges that have been nominated during RPA (Saribekian, 2019b). Additional pressure was put on the Chairman of the Constitutional Court Tovmassian, as in October 2019 an investigation against him was opened, based on the suspicion of “usurpation of state authority by a group of individuals” (Bedevian, 2019). The investigation, which included a search in the RPA headquarters and his father’s house, was launched two days after the majority in the Constitutional Court rejected the Parliament’s request to oust the Chairman of the Court. It During the debate a non-partisan MP demanded that “law-enforcement authorities prosecute Tovmassian” (Bedevian, 2019). Prior to this investigation, the Constitutional Court had issued a statement which partly approved a motion of the former president Kocharyan on the constitutionality of his pre-trial detention.

In late 2019 the Justice Ministry drafted a law, which offered financial incentives to the members of the Constitutional Court for their resignation. This law was presented as an offer for an “honourable exit” in an effort to address the lack of public trust in the Armenian judiciary and to end “the crisis in the Constitutional Court”, which is “one of the bastions of old, corrupt and authoritarian Armenia” (Saribekian, 2019b). This law was adopted in December 2019, in spite of the opposition expressed by Bright Armenia and PAP. However, none of the 7 judges from the Constitutional Court accepted the early retirement offered. These dynamics illustrate to what degree the Constitutional Court is involved in the political struggle for power, which weakens its democratic quality. It also shows that the power concentration is a trend of the political competition in Armenia which persists beyond the replacement of the governing elite. Such political competition has negative consequences for the inter-constitutional accountability, due to the lack of consensus-oriented policy-making.

### ***III. CONTEXTUAL FACTORS***

The power concentration in strong presidential systems is a common contextual features to most post-Soviet transitions. In Armenia this trend was reinforced by the domestically perceived need for a stable and unified decision-making body that might be

essential in case of war. The Nagorno-Karabakh conflict, an Armenian populated enclave in Azerbaijan, took place between 1992 and 1994 before it became one of the longest frozen conflicts in the post-Soviet space. It led to the continued economic embargo by two of Armenia's neighbours – Azerbaijan and Turkey. This vulnerability of Armenia led to the adoption of a reinforced semi-presidential system in 1995 with a powerful President, who could act decisively in the field of security, defence and foreign relations.

This trend was possible, due the high ethnic homogeneity of the country, as 94% of the population defines as Armenian Christians (UNDP, 2017). This social structure is reflected in the nationalist trend of all political parties in Armenia, where the Nagorno-Karabakh issue has gained an overarching importance. Before the Constitutional referendum in 1995, the President Ter-Petrosyan asked for citizens' support on the basis of the threat that "Armenia would succumb to civil war and lose its credits as a democratic country" (Gönenç 2002: 181). The use of such apocalyptic scenarios illustrates the processes of nation- and state-building in Armenia, which led to a centralised state apparatus, unified around the Nagorno-Karabakh conflict (Stefes, 2006a; Way, 2009). The origins of the democratic elite in the Nagorno-Karabakh liberation movement and its merge with the national-building process and democracy movement in 1980 -1990s, facilitated the firm control of the state (Rutland 1994; Way 2009).

The first Armenian constitution (1995), unlike Georgia, established a powerful centralised Presidency at the expense of weaker legislative and judicial branches. The President had the prerogative to appoint and dismiss the Prime Minister, the members of the cabinet, to dissolve the National Assembly (without any clear constitutional limitations) and to call early parliamentary elections (Elgie and Moestrup, 2016). The President had important role for the Judiciary, as the appointment and termination of the Chairman and four out of nine members of the Constitutional Court, the Court of Appeals and the Prosecutors, including the Chief Prosecutor (Defeis, 1995). He would also issue decrees and confirm the government's decisions. On the other hand, the competences of the legislative body were significantly reduced, as the executive defined the sequence for discussing laws and the budget definition and implementation (Defeis, 1995). The no-confidence vote was a competence shared with the President, who was entitled to form a new government (Gönenç 2002). In addition, the Constitutional Court had very limited power and access, as it excluded individual complaints and court referrals (Morlino and Sadurski, 2010: 200). The President initiated 92.9% of all cases between 1996 and 2004 (Harutyunyan, 2005: 243).

In summary, the institutional framework was "overshadowed by the presidency" and "provided little, if any, real means for check and balances [...] for the branches to function

independently” (Markarov, 2006: 162). The reinforced role of the president in a semi-presidential system led to a *de facto* super-presidential style of government in the first years of the independence (Morlino and Sadurski, 2010). This power concentration in the Presidency and the subordinate role of the legislative and the judicial branches was harshly criticized by the opposition (Gönenç, 2002). New constitutional amendment was initiated in 1998 as part of Armenia’s legislative commitments for CoE membership. After a failed referendum in 2003, the government managed to secure the CoE support before the referendum in 2005, as it improved the text (Colombier & Jaskiernia 2005). This reform had a very protracted character, as it was initiated at the beginning of Kocharyan’s term and concluded before its end.

Therefore, the timing and the new institutional framework were adapted to the preferences of the governing elite in a way that allows it to maintain and reproduce its power (Morlino and Sadurski, 2010). The role of the Parliament and the government was reinforced, which led to the shift from parliamentary-presidential to premier-presidential model (Morlino and Sadurski, 2010; Elgie and Moestrup, 2016). The parliament had to approve the appointment of the Prime Minister, and it had the right to dismiss him (Colombier and Jaskiernia, 2005; H. Hale, 2015a). A no confidence vote support by an absolute majority could lead to the government’s dismissal and a majority of deputies could overturn Presidential objections on specific law. The President could dismiss the National Assembly in cases of stalemate, but he needed to involve its Chairman and the Prime Minister. The government continued controlling the legislative initiative, the sequence of discussion of laws and the approval of the Budget, under the supervision of the Parliament (Republic of Armenia, 2005).

The government, chaired and supervised by the Prime Minister, is in charge of the domestic policy. The President retained his powers in foreign policy and diplomatic relations, and he could issue decrees with legal status. His countersignation was no longer a requirement for government’s decisions (Republic of Armenia, 2005, Art. 53). The President could be removed due to treason or grave crime, after a consultation of the Constitutional Court and if his suspension is supported by two thirds of all deputies. However, the President retained broad competences in the nomination of key state officials, as the National Security Council (which he presides), the Prosecutor General, Chairperson of the Central Bank and of the Control Chamber, four members of the Constitutional Court, chairperson and judges of the Court of Cassation and members of the Council of Justice (Republic of Armenia, 2005, Art. 53).

In summary, under the pressure of the opposition and international organisations the President’s competences were reduced in 2005 in benefit of increased prerogatives of the legislative and greater independence of the government. However, these changes remained

formal, due to the lack of translation in policy-making practices and dominant political competition. The central role of the President, his majoritarian support in the Parliament, and the invocation of values as national unity and stability supported the concentration of power in the President. The small size of the opposition in the Parliament– only 24 out of 131 MP – predetermined its limited impact (Colombier and Jaskiernia, 2005; Khachatrian, 2005).

The 2005 reform strengthened the Constitutional Court, as individuals, courts, local authorities, the ombudsman, the Prosecutor General and one-fifth of the deputies of the Parliament were added to the list of complainants. However, a set of responsibilities, which are “marginal” (Sadurski, 2005) and “alien to [his] role and nature” (Tokhyan, 2005; quoted in Elgie and Moestrup, 2016: 201) were added as the resolution of electoral disputes at the national level, cases of impeachment and the banning of political parties (Morlino, L. & Sadurdki, 2010: 201). These competences involved the Constitutional Court as an arbiter in the political struggle between domestic political actors. Furthermore, it gives discretion to the court to “adjudicate both matters of law and matters of fact”, which implies the potential for politicisation of an independent and impartial institution (Mazmanyan, 2012: 326).

In 2003 and 2008 the Constitutional Court recognised the existence of irregularities in post-electoral conflicts, but did not consider they were sufficient reason for invalidating the results. This supportive stance to the government illustrates the “political orientations and rational calculations of the Court” (Morlino, L. & Sadurdki, 2010: 203). In addition, five of its members are selected by the National Assembly and four by the President. Given that the ruling coalition has a sur-plus majority in Parliament, this selection process is representative mainly of the Republican Party of Armenia (RPA). The members have life tenure and enjoy formal guarantees of independence as their irrevocability (Republic of Armenia, 2005: Art. 83).

The institutional check and balances introduced in 2005 did not develop fully due to limited domestic competition and participation. Before 2013 the President had “only twice experienced the existence of a majority ready to contest him” and on two occasions the opposition had its origin in the division of the ruling elite (Morlino and Sadurski, 2010: 198; Konrad Adenauer Stiftung, 2013). This trend is illustrated by the decrease of the number of effective parties, which dropped from 5.19 in 2003 to 2.47 in 2017. In addition, the coalition agreements between majoritarian parties have confirmed the surplus-majority government composed of 2 to 4 parties as the main form of government (Table 5).

Party	Elections 2003	Elections 2007	Elections 2012	Elections 2017
Republican Party of Armenia	33	65	69	58

Orinats Yerkir (Rule of Law Party)	19	9	7	0
Armenian Revolutionary Federation (Dashnaktsutyun)	11	16	(6 in opposition)	7
Prosperous Armenia/ Tsarukyan Alliance	-----	25	(37 in opposition)	(31 in opposition)
<b>Total governing coalition</b>	<b>63 (131)</b>	<b>115 (131)</b>	<b>75 (131)</b>	<b>65 (105)</b>
<b>Coalition type</b>	<i>Minority coalition government</i>	<i>Surplus Majority Government</i>	<i>Surplus Majority Government</i>	<i>Surplus Majority Government</i>

Table 5. Governing coalitions in Armenia

Source: (OSCE, 2000, 2003, 2007, 2008, 2012a, 2012b, 2013, 2017; IFES, 2007; Nakashidze, 2016).

The stabilisation of the Republican Party in Armenia indicates a dominant-party trend, which has allowed it to consolidate power through the effective control of the legislative, the executive and consequently the nomination of key state institutions as the Constitutional and Court of Appeal Judges. This power concentration is a challenge for inter-constitutional accountability, as it implied the fragmentation of the opposition and its isolation without any possibility to influence the decision-making. This trend was also due to the use “of electoral manipulation and creation of pseudo-parties” (Morlino & Sadurski 2010: 198). For instance, the Prosperous Armenia Party (PAP) is supported by the former president Kocharyan and is led by one of the wealthiest businessmen, Gagik Tsarukian. PAP has adopted a flexible and supportive position to the RPA (Elgie and Moestrup, 2016). The Armenian Revolutionary Party Dashnakutyun also adopted a cooperative stance towards the RPA in order to avoid its complete isolation. Therefore, in 2013 the actual opposition was reduced to 6-7% of MP, mainly the Heritage party. Such insignificant role of opposition parties in the decision-making has reinforced the exclusive and zero-sum relations (Morlino & Sadurski 2010).

In addition, in the 2000s the government increasingly adopted authoritarian practices, in order to limit social protests and opposition forces. All transition Presidents (Ter-Petrosyan, Kocharyan and Sargsyan) have controlled or shutdown opposition media and parties. Electoral fraud is frequent, as well as widespread intimidation, suppression of post-electoral protests and pressure on civil servants, journalists and human rights defenders (Stefes, 2006a; Way, 2009; Iskandaryan, 2013; Bertelsmann Stiftung, 2016a; Gogia, 2017). The brutal suppression of the 1 March 2008 post-electoral protests remained as a powerful event in the social imaginary, due to the serious violation of civil and political rights. The clashes between protesters, police and military units lead to 8 deaths and more than 100 imprisoned. A state of emergency was declared during 10 days in which freedom of speech, assembly and association was abolished.

These clashes influenced deeply the protest movement in Armenia, as some of the opposition leaders and journalists, including Nikol Pashinyan, were prosecuted and arrested. Many remained in prison until another wave of social protests in 2011, when the ban on rallies in Yerevan was lifted (Bertelsmann Stiftung, 2014). This democratic weakening of the political rights affected negatively the possibilities for participation and political competition and reinforced power centralisation and domination of the state over the society (Way 2009).

In parallel, media space was significantly reduced, as the National Commission on Television and Radio (NCTR) was appointed solely by the President. Key NCTR decisions are the change of frequency of opposition channels as the TV1 in 2002<sup>17</sup>(Freedom House, 2014) or the loss of coverage of Radio Free Europe, as its contract was not renewed, even after the government withdrew a draft law for limiting foreign broadcasters. The laws on Freedom of Information and on Media improved the legal framework, but were not effectively implemented. The National Assembly had the right to nominate four members of the NCTR, which was mainly elected by the RPA majority (Babayan, 2016). Weaknesses in post-electoral coverage as lost licences or incidents of intimidation “considered to be carried out by the bodyguards of government-associated tycoons, led to self-censorship of critical journalists” (Babayan, 2016: 140). These limitations of freedom of expression were reinforced during the 2008 state of emergency, which implied complete blackout for independent media, including a control the internet, as websites as Youtube were suspended along with independent and opposition media outlets. The Security Services banned several newspapers (Babayan, 2016).

Against this background, new forms of unconventional participation developed. The brutal violation of freedom of speech, press and assembly led to a generalised sense of fear and became a turning point for civil society. Civil society transformed its actions and the public opinion, as it managed to preserve “a space for civil participation and debate” by joining forces with independent media organisation (Ishkanian 2008: 42). The “fairly intense political activism and civic engagement” revolved around grassroots urban-based movements, with focus on shared collective concerns on local level as the protection of landmarks (Konrad Adenauer Stiftung 2013: 13). These movements are “informal, volunteer based, horizontally structured, [...] loosely organised” and participatory and count more on street-based demonstrations and creative actions, rather than on clearly structured social participation (Ishkanian 2014: 157). They counted mainly on individual contributions, due to lack of trust in political parties and internationally-funded NGOs (Ishkanian, 2014b). The opportunities

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<sup>17</sup> This decision led to a negative ECHR judgement in 2008 stating that the license was improperly revoked.

provided by digital media, undoubtedly acted as a facilitator. Between 2008 and 2009 “there was an unprecedented rise in blogging about political issues and developments” (Melikyan *et al.*, 2013: 36). In 2012 and 2013 it was reinforced by crowdsourcing initiatives for monitoring elections. Such initiatives managed to attract the attention of conventional media through successful offline protests or due to their high online popularity (Melikyan *et al.*, 2013). Therefore, digital media provided space for social activism which led to increasingly relevant and successful initiatives as “We are the owners of our city”. Other such protest movements were Mashtots Park Movement in 2012, the 100 drams movement against rise of public transport prices and the Dem Em (I am against) movement in 2013, the ‘Let’s Preserve the Afrikyan Club Building’ initiative and the Electric Yerevan in 2015.

These domestic developments in Armenia were also influenced by international factors. Armenia’s high dependence in military and economic terms on Russia is a key factor in the definition of its geopolitical orientation. Russia’s leverage in Armenia is based on its “overdependence [that] emerged in a “3G” form”: guns, gas and goods (Giragosian, 2019: 5). Armenia received from Russia discounted weapons and hosts a Russian military base. It is the only Caucasus country member of the Collective Security Treaty Organisation (CSTO), which is recognised as an “important factor for stability and security in our region” and of “strategic significance” for Armenia (ArmenPress.am, 2019). Therefore, Russia provides essential security guarantees to Armenia, as it is surrounded by hostile neighbours.

Secondly, the blockade imposed by Turkey and Azerbaijan has conditioned the economic dependence on Russia, which provides 80% of all gas consumed in Armenia at a comparatively low price of 150 Dollars per 1000 m<sup>3</sup> (Giragosian, 2019). In 2006 this price increased from 56 Dollars to 110 Dollars (Tolstrup, 2009). This dependence was used by Russia for achieving monopoly of Armenia’s energy and transport infrastructure and assets. Since 2002 Russia has pressured Armenia “to either hand over strategic assets or be forced to repay its US\$94 million debt and feel the consequences of rising gas prices” (Tolstrup, 2009: 934). The 2002 property-for debt agreement led to Russian companies’ monopoly of key assets, as Armenia’s atomic and hydroelectric power plants, and its electric power grid (Falkowski, 2006). Since the 2000s key economic sectors are dominated by Russia’s investment, as the Armenal aluminium plant, Armavia and Armenian Airlines, Armersbank (Falkowski, 2006).

Thirdly, Armenia is largely dependent on Russia in the field of trade and remittances, as the trade blockade “lowers its economic growth by up to 30% of GDP” (Delcour and Wolczuk, 2015:498). The vast majority of Armenia’s EEU exports are to Russia (Giragosian, 2019). Migrant’s remittances between 2007 – 2012 represented 16% of its GDP and 89%

originated in Russia. These interdependencies are used by Russia (Falkowski, 2006). Public opinion also supports the close alliance with Russia. In 2012 90% of respondents considered that a friend country, which supports Armenia was Russia, 45% France and 19% - Georgia. In 2014, 24,8% of respondents preferred the EU as a most desirable organisation for membership, while 38,4% referred to the EEU. And if asked to choose between the EU and the CIS in 2009, 60% supported the CIS, while only 25% supported the EU (Kakachia and Markarov, 2016). As a consequence of the 2009 economic crisis, however, Armenia experienced the negative effects of its high dependence on Russia's economic flows from remittances, service sector and construction industry (Delcour and Wolczuk, 2015). The crisis led to a reduction of 29% in the total amount of remittances (Ghazaryan and Tolosa., 2012). Similar trend was observed in trade, while energy prices rose to 150 Dollars. As a consequence, Armenia's GDP decreased in 15.6% (Bertelsmann Stiftung, 2013). Such adversities led to the desire for diversification of both economic and energy sources (Giragosian, 2019).

Against this background the Eastern Partnership initiated in 2009 provided a convenient opportunity to negotiate an AA/DCFTA and modernise the economy, while opening the EU market to its products, and giving the "prospect for a visa free regime and increased sectoral cooperation" (Delcour and Wolczuk, 2015: 499). The AA negotiations were launched in July 2010 and in March 2013 all the "chapters have been provisionally closed" (European Commission, 2013b: 1). In addition, the EU provided broad training and funding opportunities as a mechanism for advancing the reforms. In 2011 the EU provided 19.1 million Euros covering a Comprehensive Institution Programme and a set of Twinning and TAIEX programmes (European Commission, 2013b). Also in 2011, the EU provided additional 24 million Euros as Budget Support and technical assistance (European Commission, 2013e). In 2012, 25 million Euros Budget Support programme on DCFTA-related topics was agreed, in addition to 15 million Euros for projects.

However, the political conditionality for the provision of these EaP incentives was limited and did not imply significant change in citizens' rights, the power centralisation or violations perpetrated by the government. Such pre-conditions were not an essential part of the political negotiations or the Budget Support, as these incentives were granted one-two years after the 2008 protests. Therefore, "the EU accepted the non-democratic political status quo after the 2008 crisis as given without making explicit political changes a precondition for closer ties", reducing the credibility of political conditionality and the legitimacy of normative support (Delcour and Wolczuk, 2015: 501). EaP normative and economic support offered modernisation and access to EU market, without any political costs for the domestic elites.

Civil society actors assessed negatively the “little critical attention from the EU, which preferred to distance itself and take a wait and see approach” (Babayan, 2011: 3). This approach compromised its value-based position for organisations criticised democratic backsliding.

In parallel, in 2010 – 2011, shortly after the creation of the Eastern Partnership, a new impulse was given to the Eurasian Integration process. In December 2010 Russia, Kazakhstan and Belarus adopted a new agenda and a Declaration for the creation of customs union, common economic space and Eurasian Economic Community. In 2011 Putin published an article on the “New Integration project for Eurasian” in which he defined that this will be the centre of all the integration processes in the post-Soviet space and will be based on “new values, new political and economic foundations” (Putin, 2011). In addition, Putin emphasized that the EEU should not oppose the EU, but will learn from its experience. In comparison to previous initiatives, the EEU is the first post-Soviet international organisation with legal personality that commits to hard-law integration and power delegation in supranational institutions (Delcour, 2017a). The first years of the EEU made obvious certain contradictions between the “economic and the (geo-)political rationales underpinning” the integration process (Delcour 2017: 71). The creation of Customs union renders impossible other regional integration processes, which effectively excludes the possibility to conclude a free trade agreement between its members and third parties. This need to choose the geopolitical framework of integration will be a key element of Armenian development in parallel to the Constitutional reform studied.

In conclusion, in the period between 2000 and 2013 the domestic environment was defined by the increased centralisation, which in 2008 raised concerns, due to the adoption of authoritarian practices, as the suppression of social protests, civil and political freedoms. The 2005 Constitutional reform did not contribute for effective check-and-balances. The main reason for this was the deficient political competition and limited social participation, due to fake opposition parties and coalition dynamics that aim to concentrate power in the RPA. The opposition was reduced to insignificance and was effectively ignored by the governing coalition. However, social activism increased taking advantage of new digital space opportunities. Unconventional forms of participation enjoyed greater legitimacy and success based on growing social support and discreditation of the government’s authoritarian methods. Armenia diversified its foreign and economic policies after negotiating AA/DCFTA, while the military, economic and energy dependence on Russia persisted.

#### ***IV. DOMESTIC COMPETITION AND PARTICIPATION***

A nine-member Constitutional Commission adjunct to the Presidency had to present a concept of the reform in April 2014 and in ten months (June/July 2014) to prepare a draft. The

reform was described as an open-ended process. However, its adoption (2017) overlapped with the end of Sargsyan's second term (2018) and civil society organisation argued that the amendment aimed to perpetrate the Sargsyan's government. At this point, the RPA had fully consolidated its power positions, as in 2013 Sargsyan was re-elected and in 2012 RPA renewed its parliamentary majority. This allowed the RPA to dominate the process of Constitutional reform. In addition, both the decision of the EEU membership and the Constitutional reform were announced in the same week and were criticized for their closed, top-down and elite-based nature. The reform was described as very limited in terms of access and inclusivity of different social and political groups, and low public participation (Lovit, 2017). Its elite- rather than public-driven development compromised the trust, as it was not a product of domestic public debate or international pressure. In 2014 and in 2015 a total of 81% and 73.7% of respondents respectively did not trust at all or mostly distrusted the reform (Apr Group, 2015). In 2014 and 2015 60% and 39.5% of respondents respectively thought that there was no need for a constitutional reform (Apr Group, 2015).

The size of the Constitutional Commission and the actors involved are one of the reason for this criticism. The Commission is composed of only nine members, as the smallest constitutional commission since independence<sup>18</sup> (Elgie and Moestrup, 2016). In addition, the Commission is adjunct to the Presidency, which is the leading institution in the process. The participation and competition in the reform are analysed with the support of the affiliation network based on biographical data of Commission member, presented in Figure 1 below. An affiliation network includes individuals that are linked in a network to their employers or affiliation institutions, in order to provide information regarding the background of the members involved in the reform. Figure 1 identifies in different colours the types of organisations. The size of the circle shows the relative weight of the institution or individual based on the number of its links. Each individual is connected only to institutions based on the biographical information collected and each institution is linked only to individuals. The thickness of the lines depends on the number of positions that the same individual has held in the same organisation. If one member started as an officer and then became head of unit in the same organisation, the line connecting them would be thicker.

The affiliation network on Figure 1 confirms the above criticism, given that the most important institutions (to which the highest number of individuals have belonged) are the Presidency and the Academy of Sciences (5 members). This trend corresponds to the central

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<sup>18</sup> In the 2005 reform initially 32 members were involved and in 1999 -16 members (Elgie and Moestrup, 2016).

role of the President in the Armenian institutional framework and in this reform process. The next institutions in terms of importance for the members' background are the Constitutional Court, the Parliament and the Yerevan State University (YSU) (four members have belonged to each of these institutions). The Prosecutor General, the RPA and the German Development Agency GIZ are the following institutions in importance (3 links). Such importance of the Prosecutor General and the RPA indicate certain alignment with the preferences of the executive, in addition to the members linked with the Presidency. Interestingly, the German Development Agency is significantly over-represented in comparison to other international organisations or non-governmental organisations. The reason for this is that the GIZ implements a broad Legal Project in the Caucasus, in the framework of which it contracts well-known constitutional experts that are also members of the Constitutional Commission. Three members of the Commission are or have been contracted in the framework of the GIZ project. In addition, the GIZ expert presented the Constitutional draft in the Parliament, which led to a strong identification of this reform with his personality.

In contrast, only two members of the Constitutional Commission have held any positions in the Prime Minister's Office. Given that the 2005 Constitutional reforms strengthened the role of the Prime Minister in the institutional framework, it would be expected for this body to have greater representation among the Commission members. The reduced involvement of individuals connected to the Prime Minister could indicate (in another context) a conflict between Prime Minister and President. However, given that in the specific case of Armenia, the Prime Minister and the President belong to the RPA, which has a surplus majority representation in the Parliament, it is possible to conclude that in spite of the 2005 Constitutional reform the President retains a leading positions in the actual policy-making.

In addition, the affiliation network makes obvious the exclusion of certain entities from the Commission, as would be the case of political parties (other than the dominant RPA), civil society organisations and Judicial institutions (apart from the Constitutional Court). The executive (apart from the Presidency) is represented through connections of individual members with the Ministry of Justice and the Ministry of Environment. The Judiciary is represented only by the Supreme Court and the Supreme Council of Justice which are linked to one member. These institutions, like civil society organisations are peripheral in the network due to their connection to only one member. Despite the inclusion of the citizens' rights as the main goal of the reform, the ombudsman was not represented neither. Only one member of the Commission had been advisor to the Ombudsman before 2010.

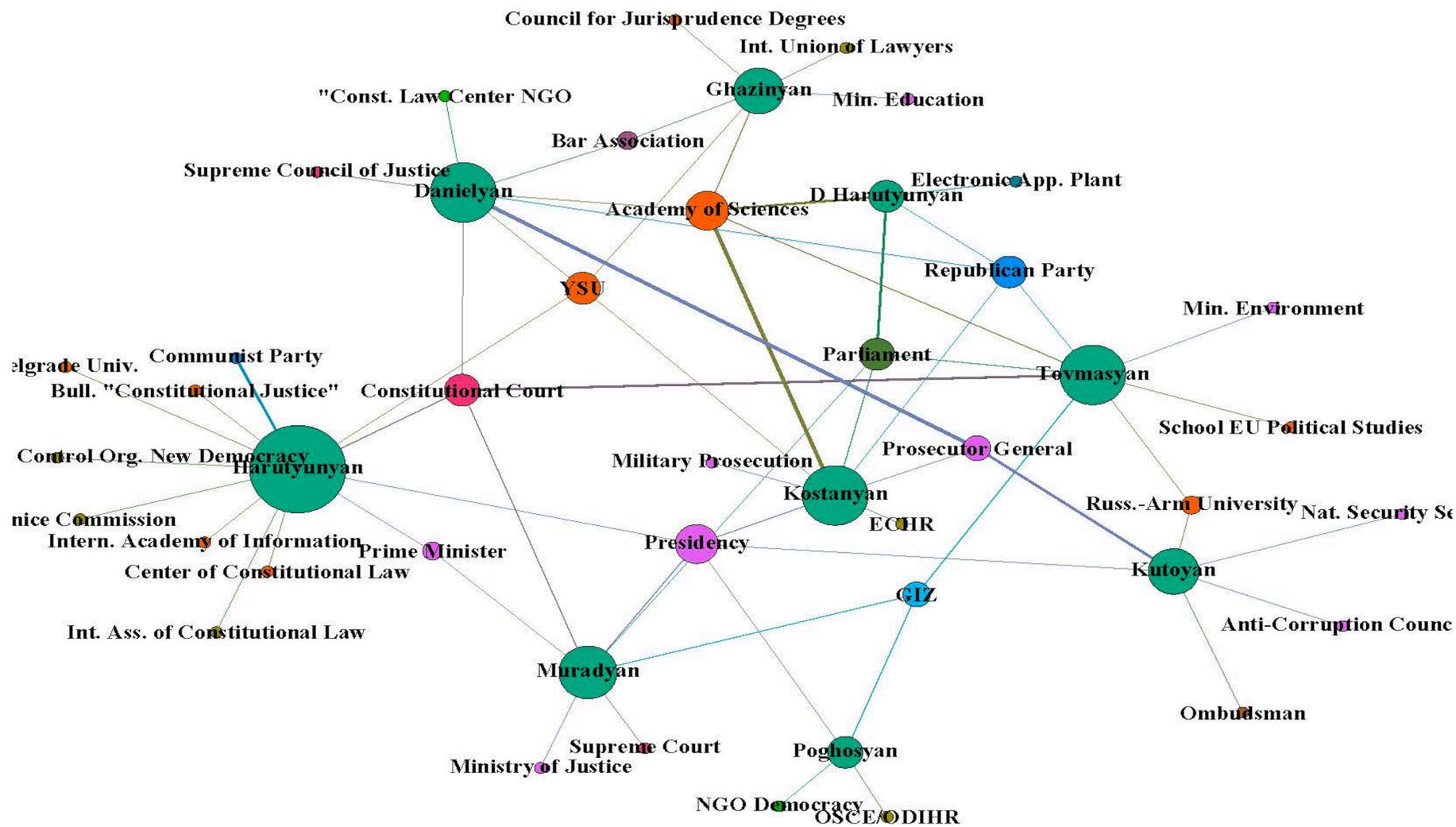


Figure 14. Affiliation network of members of the Constitutional Commission Armenia 2013 - 2015

Legend Figure 14. Affiliation network of members of the Constitutional Commission 2013

	<i>Member of Commission</i>		<i>Legislative</i>
	<i>Academic entity, University</i>		<i>International Organisation</i>
	<i>Executive</i>		<i>Judiciary</i>
	<i>Political Parties</i>		<i>Independent body</i>
	<i>International NGO</i>		<i>CSO</i>

In conclusion, Figure 14 illustrates both the representativeness of the Constitutional Commission, as well as the broader institutional framework and the political competition in Armenia. The Presidency concentrates the decision-making power of the executive, while being supported by the Parliament and the Constitutional Court. Surprisingly, only two members have worked in the Judicial system, while three have experience in the Prosecutor's Office. Civil Society and opposition parties' involvement is very limited or non-existent, which contrasts with presence of three members that have worked for more than 10 years for the German GIZ, which is the main foreign institution (more than one connection). Therefore, the Presidency remains dominant in the institutional framework and leads this specific reform process. The RPA has a dominant representation in the Commission.

When the first Constitutional concept was accepted by the President in 2014, domestic actors mobilised in order to influence the reform. Apart from the formal discussions organised by civil society and international organisations, the political opposition set up numerous street protests. The Agreement for integration in the EEU in October 2014 contributed to the intensification of the social mobilisation. However, the opposition actors faced important challenges in unifying their positions, due to their differences in foreign policy and on the constitutional reform. Each opposition party pointed out a different reason against the Constitutional amendment. The only open supporters of the reform were the RPA and the Armenian Revolutionary Fund Dashakyutsun (ARF). The ARF Dashankyutsun is a traditionally principled supporter of the parliamentary model.

In contrast, the Armenian National Congress (ANC) (led by the first president Ter-Petrosyan) was a vehement opponent of the parliamentary model, mainly due to security reasons. The ANC disagreed even with the 2005 Constitutional change. In addition, the ANC claimed that the goal of the constitutional amendment is to remove the limit of two presidential mandates. In addition, the party Heritage organised a conference in September 2014 with the goal of discussing the Constitutional reform. However in 2015 it became one of the most active

opponents of the constitutional reform, as they pointed the change in RPA position which in 2013 was against the parliamentary system with proportional elections (Panorama.am, 2014). At the end of 2015 when protests were organised by the No-camp, Hovhanissyan, the leader of the Heritage party, opposed the Constitutional change in order to prevent further power consolidation of the government (Panorama.am, 2015).

In 2013 the Prosperous Armenia Party (PAP) had moved to the opposition, after abandoning its coalition with the RPA, which is representative of its shifting loyalty. In 2012 Gagik Tsarukyan, PAP's oligarchic leader, announced that he would not be running for President, leaving Sargsyan as the main contender. In 2014 PAP announced that they do not support the Constitutional reform. At the beginning of 2015 a conflict emerged between Sargsyan and Tsarukyan, due to his involvement in a nationwide protests against RPA. As a counterreaction Sargsyan removed Tsarukyan from the National Security Council, opened an investigation for unpaid taxes against him and the police raided "premises owned by supporters of Tsarukyan, and around 30 Prosperous Armenia members were detained" (Mghdesyan, 2015). When the Parliament initiated a procedure to deprive Tsarukyan from his seat, the PAP withdrew from the protest movement (Mghdesyan, 2015).

Consequently, in 2015 when the Constitutional amendment was voted in the Parliament, it was supported by the RPA, PAP and Dashnakyutsun (ARF). Since September 2015 PAP even started campaigning as part of the "Yes-front" in support of the amendment (Bedevyan, 2015). Two members of the PAP that abstained from voting were dismissed from the party, which illustrates the pressure on PAP deputies, in spite of the parties' initial opposition to the reform process (Movsisian, 2015). This frequently shifting behaviour of PAP illustrates the personalist and conjunctural features of Armenia's political parties. It also demonstrates the unchallenged use of state resources for limiting and controlling diverging opinions. Orinats Yerkir (Rule of Law Party) also opposed the reform, but were not so active. The RPA power consolidation was partially due to the lack of a viable opposition party. Parties without clear ideological or policy position aligned with RPA often in order to avoid isolation.

In 2015 the protests eventually gathered around the "No-camp" against the Constitutional amendment. However, some of the challenges for the consolidation of their efforts, partially due to their different geo-political stance. While the leaders of Heritage would take advantage of the protest to denounce the EEU membership (October 2019), Ter-Petrosyan (ANC) would see the EEU integration as an irreversible process (Aslanyan, 2014). Tsarukyan (PAP) also supported Armenia's membership in the EEU, given his close links with Russia. In summary, if the small parliamentary parties as ANC, Heritage, Dashnakyutsun and Rule of

Law would oppose the constitutional reform, they would disagree on the foreign policy orientation of the country. Given the relatively small representation of these parties in the Parliament, such differences reduced significantly their capacity to influence the reform process. The challenges posed by this fragmentation were made obvious, due to the overlapping dates of the EEU agreement (10 October 2014) and the presentation of the Constitutional Concept to the President (15 October 2014).

The Constitutional Commission (CC) started organising consultations and meetings with CSO only after the publication of the Constitutional draft the 21 August 2015. All previous consultations (between May and July) were organised by CSO or international actors, and CC representatives not always attended those meetings. The draft was voted in the Parliament the 5 October and the referendum took place the 6 December, which allowed only 46 days of discussion. This short period for discussion was criticised. In addition, given that the text put on the referendum was almost the same as the one presented to the Parliament, domestic actors concluded that the CC had no intention to hold meaningful debates.

The political goals behind such a hasty process were also criticised. For instance, the Citizen Observer Initiative, a coalition of CSO, issued a statement questioning the process and calling international organisations “not to support the Constitutional amendments”. They argued that the unexpected decision to amend the constitution, the pace and lack of openness of the process, as well as the political pressure put on opposition actors (as the PAP) raised serious doubts regarding the declared goals of the reform. They suggested that “the constitutional amendments are initiated with one major purpose - reproduction of the political power of S.Sargsyan and/or the Republican Party of Armenia led by him” (Citizen Observer Initiative, 2015: 2). Therefore, domestic actors that would in principle support the parliamentary democracy, opposed the Constitutional reform, due to its instrumental use by the ruling elite (Panorama.am, 2015). The political developments proved that Sargsyan had the intention to run for Prime Minister.

Key domestic criticism against the reform and the positive assessment of international observers as the CoE, was the impossibility to actually apply the principle of representation in Armenia’s political context, due to the lack of equal political competition. The RPA spent 17 years in power and significantly outnumbered all other parties in social and economic resources. The RPA controlled all representative positions, which allowed it to control also independent institutions as the Judiciary, the Prosecution. The fact that the actual opposition in the Parliament was reduced 7-8 MP, and minor parties preferred to collaborate rather than be isolated, led to the de facto control of all state positions by one party. The presence of parties as PAP contribute to legitimate the RPA domination. The sur-plus majority coalitions in

Armenians give place to a dominant party system which annuls the political opposition and consensus-seeking between political actors in a parliamentary democracy.

The first campaign against the Constitutional reform under the slogan “You will not pass it” was launched in September 2014 and in September 2015 the No-front was launched by political parties, civic organisations and initiatives. They started organising joint rallies and protests in September 2015. In addition, the New Armenia Public Salvation Front, members of Heritage party and civic initiatives as “Stand up Armenia” called for overthrowing the government by civil disobedience. They counted mainly on rallies and awareness-raising campaigns. These initiatives were part of a broader process of civil society mobilisations as a strategy for influencing decision-making. In contrast to 2008, these actions “were decentralised and less coordinated” and gained power based on their successful mobilisation (Helsinki Citizens Assembly Vanadzor, 2016: 10). As response to the Electric Yerevan protests against the rise in electricity price, Russian companies sold part of their assets to the “Armenian-Russian businessmen, who runs the Tashir group” (Kostanyan and Giragosian, 2017: 13).

In the long-term a constant increase in unconventional participation developed. Citizens’ support of protest movements increased from 59% in 2008 to 72% in 2015 and to 69% in 2017 (Caucasus Research Resource Center, 2018a). According to one party leader, the success of such movements was based on their capacity to gather enough citizens and in this way force the government to negotiate and compromise. Between 2008 and 2018 “the opposition became traders of social capital” as a strategy against elections that were not free and fair, and a parliament dominated by non-transparent deals (Interview 52). The government would compromise only if protests would gather 30 000 people at Freedom Square in Yerevan. If protesters do not accept the negotiations, then threats that “we would return to the 01 of March” 2008 would emerge (Interview 52), which illustrates the significance of this event in the social imaginary. It is argued that this civic mobilisation initiated in 2008, reached a peak in 2013, fed into the 2015 protests against the Constitutional amendment and provided the basis for the 2018 Velvet Revolution. The continuity of leaders and slogans of these civic initiatives in the ‘Velvet Revolution’ prove this point. Such is the case of slogans as “We are the owners of our country” and “My Step Alliance” led by Nikol Pashinian established as a civic initiative in 2013 and evolved in 2015 into a political party (Ishkanian, 2018).

Besides negotiation, another strategy of the government for dealing with opposition and protest was the use of political and administrative resources, as the confrontation with the PAP showed. The social mobilisation met multiple obstructions at the local level (as lack of space, access, transport etc). Different hotels refused to provide them space for the forums or

electricity for the booked venues (Hetq.am, 2015; Movsisyan, 2015; Helsinki Citizens Assembly Vanadzor, 2016). The police visited the apartment of one of the organiser's parents, due to his political beliefs as the police acknowledged (Helsinki Citizens Assembly Vanadzor, 2016). The violent clashes with the police during the Draft's adoption in the Parliament the 05 October led to the arrest of 21 marchers (Helsinki Citizens Assembly Vanadzor, 2016).

The unequal access to resources of the different actors involved in the Yes- and No-front is illustrated by the campaign costs in support of the Constitutional reform (provided mainly by RPA, PAP, ARF) that were ten times higher than the funding spent for against the referendum (Helsinki Citizens Assembly Vanadzor, 2016: 46). Regarding the misuse of administrative resources, civil society organisations reported that schoolteachers were pressured by their principals to take part in TV shows on the Constitutional reform. Key RPA figures were included in the campaign in support of the referendum, as Vigen Sargsyan and Karen Karapetyan and all governors of the regions (Marz) were appointed as regional coordinators of the Yes-front (Helsinki Citizens Assembly Vanadzor, 2016). Such use of economic and state administrative resources clearly contrasts with the challenges faced by the No-front, and the "You will not pass it" initiative. The opposition of private actors illustrates a very subtle approach in which rights are not officially suppressed, but their practical implementation is made impossible. Such practices raise considerable doubts regarding the informal channels for influencing the decision-making process.

Legislative improvements on media and the use of alternative (mainly online) channels also contributed to social protests and civic initiatives. Online media increased its number, plurality and audience "at the expense of traditional media" (Freedom House, 2015). The greater independence of online media increased the pluralism and gave access to alternative sources of information to more citizens, in contrast with the partial coverage of the main TV channels. The ownership of big TV channels concentrated in the hands of the state or government-friendly business elites. In 2013 the Gyumri TV Gala, which in 2007 transmitted speeches of the opposition Presidential candidate was denied digital licence and the Court of Cassation upheld a "decision ordering Gala to stop using the Gyumri television tower and to dismantle its transmitter" (Freedom House, 2015).

In spite of the abolishment of libel as a criminal offense in 2010, the amount and the number of administrative sanctions for libel against journalists increased significantly (Reporters without Borders, 2011). The ongoing discussions between 2013 and 2015 on a draft law, which "proposed holding media outlets responsible for false or libellous information found in reproduced content or user comments, did not lead to its approval in the Parliament (Freedom

House, 2015). On the other side, defamation and insult continued being used against media. In the first half of 2013 – sixteen defamation accusations were filed and in 2014 - eight. Violence against journalists was a common problem in this period. During the Electric Yerevan protests 13 journalists were subject to violence by the police, 10 were detained and equipment of some was confiscated or broken. In addition, complaints of violence and pressure on journalists were not investigated, prosecuted or accepted to trial. The case of the journalist Ani Gevorgyan was not accepted by all instances in Armenian, but her lawyers referred it to the ECHR (Council of Europe, 2018). Journalists from independent or critical to the government media, as Shant TV or Armenia today were beaten (Freedom House, 2014).

#### ***V. INTERNATIONAL FACTORS***

During the initial stages of the reform, the Constitutional Commission (CC) maintained the closest collaboration with the Venice Commission, which issued six opinions on the draft and met with the CC three times in 2014. Given that the first Constitutional Concept focused on the general principles of the amendment, the report issued in October 2014 underlined just a few comments. When the final Draft Constitution was published, the Venice Commission concluded that it “is of extremely high-quality” and “is now in line with international standards” (Venice Commission, 2015c: 15). It repeatedly emphasized the “quality of the exchanges and the open and constructive attitude” of the Constitutional Commission and noted that “most of its suggestions [...] have been given serious consideration and have often been taken on board” (Venice Commission, 2015a: 4).

However, this positive assessment contrasts with the criticism of domestic actors who claimed that the Venice Commission failed “to consult with non-governmental organisations in a similarly regular and meaningful manner” as with the Constitutional Commission (APELLA Institute for Policy Analysis and Dialogue, 2015: 2). Civil organisations argued that they were denied access to a meeting with the Venice Commission and criticised it for displaying “inconsistency in terms of eliminating its concerns previously brought to light by merely accepting the introduced problematic reforms and issuing a positive assessment of the final draft” (Helsinki Citizens Assembly Vanadzor, 2016: 8). The closed and exclusive features of reform process influenced negatively the image of the Venice Commission in Armenia. Regarding the accusations of instrumental use of the Constitutional change by the RPA, the Venice Commission noted that “regime changes [...] should not aim to advance the positions of incumbent or future power holders” and “should meet broad social and political consensus” (Venice Commission, 2015a: 12). Its opinion also welcomed and encouraged the meeting with

party and social actors “in order to clarify any possible misunderstandings on the aim of the reform and give it better chance to succeed (Venice Commission, 2015a: 12).

However, after Sargsyan was nominated for Prime Minister, civil society organisation claimed that the Venice Commission has “in some respects lacked local knowledge and necessary awareness of the nature of political processes in the country” (APELLA Institute for Policy Analysis and Dialogue, 2015: 2). The lack of consideration of the trends of domestic competition and participation in parallel to the institutional framework is the reason for this deficiency. Even if the Constitutional draft provides for a balanced institutional system, the absence of actual opposition and the domination of all representative and independent positions by one party, make the mechanisms for inter-constitutional accountability devoid of their substance. The prioritisation of an institutionally-focused analysis, at the expense of participation and competition is a weakness. Reportedly Gianni Buquicchio said at a Conference in Yerevan that “the President instrumentalised the Constitution, but that the country has a good Constitution” (Interview 54).

The competition between international actors became obvious during the referendum for the Constitutional change, when the OSCE/ODIHR and the Commonwealth of Independent States (CIS) issued two contradictory statements. The OSCE/ODIHR observation mission recognised that “the authorities mobilised extensive public resources to campaign in favour” (OSCE/ODIHR, 2019: 3). In addition, concerns were raised, due to the inclusion of many emigrants in the voting lists and other “serious problems as interference and intimidation by proxies of supporters of the “Yes” campaign leading to alternation of the actual vote results” (OSCE/ODIHR, 2019: 3). On the other hand, the electoral observation mission of the CIS concluded that the referendum “took place in free and calm environment” (Radio Azatutyun, 2015). The head of the CIS mission emphasized that the “one and only conclusion of the mission is that at all levels the citizens were given the opportunity to vote freely and to express their will” (Radio Azatutyun, 2015).

In addition, the President Sargsyan underscored that “Armenia appreciates the objective and impartial assessment of international organisations”, as the CIS, which is the “biggest and most representative” organisation ” (Radio Azatutyun, 2015). This example of parallel observation missions clearly illustrates the opposition of the socialisation mechanisms used by Western (OECD/ODIHR) and CIS organisations. The EU issued a statement urging Armenia “to fully investigate credible fraud allegations” based on the OECD/ODIHR assessments (EUneighbours.eu, 2015). On the other side, Russia referred to the CIS observation mission. This dynamic shows how CIS has mimicked the Western electoral observation and contributed to the legitimation of the referendum outcome.

In parallel to the Constitutional reform, the international influence in Armenia can be analysed through the processes of international negotiation with the EU and the Eurasian Economic Union (EEU). The successful negotiations for the AA/DCFTA between the EU and Armenia were planned to conclude with its signature in November 2013. The President's declarations at the end of 2012 proved his intention to integrate in the EU market. In an interview with the Russian newspaper "Izvestia" in 2012, Sargsyan stated that "our priority today is the agreement of the comprehensive free trade agreement. We want to sign it in 2013" (Radio Azatutyun, 2012). As a reason for not becoming member of the Russia-led Customs Union was pointed the lack of common border with any of its members (Radio Azatutyun, 2012). In February 2013 he emphasized that "the structure of the Armenian economy is very different from that of the Customs Union's countries that [...] pursue a policy of supporting domestic manufacturers through quite high customs duties [...] on the whole, [...and...] entering the Customs Union would be "very complicated, if not impossible" (Radio Azatutyun, 2013a).

However, this decision was reversed in September 2013 after a meeting between Serzh Sargsyan and Putin in Moscow. A common statement outlined the "positive dynamics in political, economic, cultural-humanitarian, military and military-political fields" (President of the Russian Federation and President of the Republic of Armenia, 2013). The two Presidents also confirmed future bilateral projects for the modernisation and diversification of Armenia's economy, including common energy, transport and infrastructure projects. In addition, Sargsyan announced that Armenia will become part of the Customs Union and of the process of Eurasian Integration, claiming that, "since we share a system of military security, it is impossible and inefficient to isolate ourselves from the corresponding geo-economical space. [...] This is a rational decision; it is a decision based on Armenia's national interests. This decision is not a rejection of our dialogue with European institutions." (Peter, 2013)

From a foreign policy perspective these statements clearly illustrate the leverage of the competing regional alternatives, the EU and EEU, and the way that they condition the geopolitical decisions of a relatively smaller economy as Armenia. The lack of clear Russian opposition before 2013, allowed Armenia's government to pursue AA/DCFTA negotiations as an alternative market. However, the consideration of the military and geopolitical leverage of Russia led to a rational decision of the EEU integration. Interestingly, the EEU was linked to security questions, in spite of its economic and not military character. This argumentation of Sargsyan shows the existing links between different leverages in the region. For instance, economic and security cooperation between Armenia and Russia did not weaken during the AA/DCFTA negotiations. In 2010 the presence of the Russian military base was renewed and

military trainings of the CSTO took place in Armenia. An agreement for the military-technical cooperation between Armenia and Russia was signed In June 2013. In addition, the intergovernmental commission of economic cooperation between Russia and Armenia continued its work in the period (President Republic of Armenia, 2012; Federal Service Militaty-Technical Cooperation Russian Federation, 2013).

The security incentives were reinforced by the announcement that “Russia agreed to deliver arms to Azerbaijan worth 4 billion Dollars” in summer of 2013, which increased Armenia’s vulnerability and led to discontent with its strategic ally (Makarychev, 2018: 11). In addition, it became public that the government had incurred in secret subsidisation of the increased prices of Russian gas, prior to the 2013 elections. Based on reports of the Customs service, economic analysts stipulated that gas prices were unofficially increased in 2011 or 2012, while domestic prices remained unchanged. A week after the electoral victory of the RPA, the government announced a 50% price increase (Stepanian, 2013). These developments together with the decision to abandon the AA/DCFTA negotiations and to integrate in the EEU triggered domestic protests in front of the Presidency and the RPA headquarters.

In December the protests were renewed, due to an official visit of Russia’s delegation. Reportedly more that 100 protesters were arrested (Danielyan and Hovhannisyanyan, 2013; Largir.am, 2013). Against this background, Russia’s delegation included around 600 Russian representatives, among which were six ministers, 11 regional governors, the directors of companies as Rosatom, Gazprom, RUSAL, Rosneft, INTER RAO, VTB. The delegation took part in the international forum “Russia-Armenia. Customs Union”, and Putin visited the Russian military base. During the visit, Armenia donated additional territory to the Russian military base, sold its 20% of the national gas company ArmRosGazProm and Gazprom received a monopoly to operate Armenia’s pipelines until 2043 (Gazazyan, 2012; Kostanyan and Giragosian, 2017b). In exchange Armenia will have access to Russian weapons at domestic price and can buy gas at a lower price (189 Dollars per m<sup>3</sup>) until 2018, while Rosatom would support the extension of the activity of Armenia’s nuclear plant (Gazazyan, 2012).

Consequently, Armenia lost completely its control of ArmRosGazProm, its pipelines, limiting in this way its possibilities of energy diversification. Therefore, an essential sector as the energy provision and management became a reserved policy domain in which Armenia lacks effective power of control and government. This high dependence is one of main criticisms of the domestic protests. Furthermore, at the end of December 2013 a roadmap for Armenia’s EEU membership was adopted, which was seen as a concession in order to reduce the costs for Armenia. In order to soften the difficulties of Armenia’s EEU integration, a

transition period of tariffs' exemption on 800 Armenian goods until 2020 was agreed (Giragosian, 2013). Duties on Russian deliveries of gas, petroleum products and diamonds were also annulled (Ter-Matevosyan *et al.*, 2017).

In addition, the above developments showed to what degree Russian-Armenian relations are built on the basis of deep elite linkages, in addition to the effective use of leverage. In parallel to the adoption of Constitutional amendment, Armenian elite showed limited efforts of renovation. In October 2015 the Russian oligarch and president of the Union of Armenians in Russia (UAR) announced his plans to establish a party and run at 2017 parliamentary elections. UAR is one of the biggest of Armenian diaspora organisations which includes many successful businessmen in Russia. However, in Armenia this announcement was interpreted as an external influence of Russia and eventually Abramyan removed his candidacy (Kryilov, 2015). In 2016 the position of the Prime Minister was held by Karen Karapetyan, the former director of the company ArmRosGazprom. His government was presented as a technocratic one with high expectations for economic growth and development. This dynamic shows to what degree Russia's economic, political and Armenian political elite are closely linked.

However, this situation changed after the Armenian political elite renewed with the 2018 Revolution. This period revealed a lot of new dynamics regarding the role of international actors and their interaction with domestic reform processes. In the first days of the Revolution Pashinyan repeated that the protests are "an internal process", without foreign policy or geopolitical implication and that the "Armenian-Russian relations [...] are strategic" (Pashinyan, 2018). He also clarified that when "considering the best interests of Armenia [...] drastic changes in foreign policy would be dangerous" (Pashinyan, 2018). As the protests evolved Pashinian adopted a sovereignty-based discourse, claiming that he is not a pro-Western, nor pro-Russian, not pro-American – [but] a pro-Armenian politician" (Aravot.ru, 2018). Such claims were instrumental as they prevented social alarm and sent an unequivocal signal to Russia. They also played important role for Russia's rhetorical entrapment, given its discursive focus on domestic sovereignty and multi-vector foreign policy. Consequently, Kremlin's Press Secretary Dimitrii Peskov stated that "this is an exclusive internal question" and that Armenia is "our closest partner" (Russia Today, 2018).

However, if Russia accepted the power transfer in Armenia, it did not remain indifferent to the prosecution of figures close to Russia's political elite, as the arrest of the former President Kocharyan and the investigation of the CSTO General Secretary Yuri Khachatryan for their role in the suppression of the 01 March 2008 protests. The Foreign Minister Sergey Lavrov expressed concerns that "these actions contrast with the statements that [Armenia's

government] will not persecute their political opponents” (Vesti.ru, 2018). In 2019 a Duma Deputy Zatulín stated that the trial against Kocharyan is “shameful for Armenia” (168hours, 2019b). Similar tensions took place in the CSTO with direct confrontation between the Belarusian President Lukashenko and Pashinyan. In addition, the gas price was also slightly increased after the 2018 Velvet Revolution (from 150 to 165 Dollars) (Giragosian, 2019). To this pressure Pashinyan replied that this is a democratic issue of law violation.

Armenia applied the same distinction between international and domestic-democratic issues in the communication with the EU. The 2013 U-turn put an end to the expectations to combine Russia’s “security umbrella with an adherence to the EU’s economic model” (Dragneva et al. 2017: 13). However, Sargsyan insisted on continuing the close dialogue with the EU, claiming that the European model is a conscious and irreversible choice of “Armenian nationhood” and it “is determined to continue with the implementation of the deep and large-scale reforms aimed at fighting corruption” (President of the Republic of Armenia, 2013). Sargsyan insisted that the EaP “provides with an opportunity to build qualitatively new, closer and expanded relationship upon the basis of shared European values. Developing such a relationship stems from Armenia’s and Armenian people’s spiritual-cultural and historical-political heritage, and it is the conscious demand of our society” (President of the Republic of Armenia, 2013). Therefore, EU-Armenia relations are framed as a constructivist linkage with European values as a civilizational choice and inspirational model for state and nation-building.

Furthermore, Armenia insisted on achieving a format which “would be compatible with other formats of cooperation” (President of the Republic of Armenia, 2013). Consequently, a specific agreement for Armenia, the Comprehensive and Enhanced Partnership Agreement (CEPA), was negotiated and signed in 2017. CEPA is a significant precedent of a contractual framework compatible with the EEU, as it adapts the AA with reduced trade-related provisions. CEPA proves the intentions of the EU to engage in a non-exclusive way with its neighbours and to provide more tailor-made cooperation (Dragneva, Delcour and Jonavicius, 2017; Devyatkov, 2018). The conditionality clause of the democracy and rule of law is maintained in Art. 379 of CEPA and it includes a cooperation for developing “democratic institutions and the rule of law” and “judicial and legal reforms” (European Union & Republic of Armenia 2017).

The financial assistance to Armenia continued the same trend of reduced amounts of support. For the period 2014 - 2017 both Georgia and Moldova were expected to receive between 335 and 410 million Euros, while for Armenia were designated between 140 and 170 million Euros (Eastern Partnership: Civil Society Forum, 2014). After the Velvet Revolution Pashinyan expressed his intentions to continue with the reform processes. However, in July

2018 he demonstrated a more critical stance, when saying that “we are not in a state to melt from the compliments [...] Armenia is no longer an applicant or a petitioner [...] After our revolution, we heard welcome statements from the European Union, but there are still no tangible changes in politics. [...] Either they should reduce the inspired tone of these statements or should significantly change the policy” (Civilnet, 2018). As a consequence, in 2018 the EU provided additional 8.040 million Euros for deepening democracy, through the support of the electoral processes. The funds provided to Armenia increased from 34.5 Million Euros in 2017, to 46 Million Euros in 2018 and to 65 Million Euros in 2019 (European Commission, 2019c).

In conclusion, Armenia has adopted a flexible strategy towards the increased competition in the region, as it takes advantage of different opportunities provided, while adapting to the limitations imposed. Armenia prioritises the achievement of the goals set by the domestic elite, based on sectoral specialisation of the regional actors. Russia is seen as a security guarantor, provider of economic and energy resources and important labour market, while important elite linkages remained valid until 2018. For receiving these benefits, Armenia had to remain in the geopolitical and geo-economic sphere of influence. On the other hand, the EU focuses on the support of democratic reforms, through socialisation opportunities, technical assistance and economic support. Armenian post-Revolutionary elite has demanded the adaptation and flexibility from both the EU and Russia. In the field of Rule of Law domestic experts insist on the need of financial assistance that would remain in the country, rather than be paid to EU experts (Interview 58). The social attitudes in Armenia confirm such differentiation and specialisation at the social level too. In 2012 52% of respondents identified the EU as a preferential partner in the field of Human Rights, 24% in industry, 14% in the Karabakh issue and 10% in external security. Russia, on the other side, has a competitive advantage in external security (72% of respondents) the Karabakh issue (64%), Industry (50%), and less in human rights (25%) for respondents (Kakachia and Markarov, 2016).

## ***VI. CONCLUSIONS. IMPLICATIONS FOR FREEDOM AND EQUALITY***

The reform process in inter-constitutional accountability in Armenia is defined by three key aspects. Firstly, there is a clear relationship between the external and domestic conditions in which the country develops, the dominant dynamics of competition and participation and the institutional transformations in the country. The external threat for the mere existence of the state defined a vert centralized power vertical in terms of domestic competition and participation which translated in a top-down semi-presidential system. The changes in the institutional framework from super-presidential to semi-presidential and to parliamentarian did

not lead to any significant change in the power centralisation in the country. In spite of having renewed the institutional and party system, sur-plus majorities in the parliament produce power concentration, which is a common features that survived beyond all reforms and the revolution. This trend of sur-plus majority is also due to the weakness of opposition parties and the conflict culture in the country. Rather than healthy negotiation, competition and consensus-seeking between political parties, the environment between is dominated by zero-sum relationships.

The network analysis performed in this chapter confirmed the implication of this exclusionary and centralised decision-making and graphically illustrated the dominant trends in the institutional framework. The affiliation network of the Constitutional Commission shows clear domination of the Presidency at the expense of the other branches of power and even above the Prime Minister, which would not be expected to be the case in a mixed system. In addition, the drafting process was dominated by the Republican Party, in contrast to the lack of representation of any opposition party or civil society organisations. Another interesting finding is the surprising connection of three members of the Constitutional Commission with the German Development Agency GIZ. Therefore, this dynamic shows very effective linkages of an EU members state in key domestic process of democratisation. The representation of these actors in the most important stage of the reform – the drafting - complements the process-tracing findings with significant insight on the actual functioning of the institutional system and on the causal mechanisms. Therefore, the first and essential drafting stage of the reform proved to be very closed and centralised under the influence of the Presidency and the RPA. Given the outcome of the process in which the President Sargsyan was nominated for Prime Minister, these findings clearly show how the dominant actors in the reform process managed to shape its outcome according to their interests.

These policy-making dynamics together with the accumulation of violations of civil rights posed a majority of citizens in the conditions of extreme inequality and freedom limitations. After 20 years of RPA government a loss of legitimacy of the former governing elite led to the spontaneous creation of unconventional channels for participation as a legitimate and effective way of involvement in political decision-making. The Velvet Revolution in 2018 showed that social protests acquired greater legitimacy than institutional mechanisms of accountability and participation. However, after 2018, in spite of the change of political elite and the shift to parliamentary system, the sur-plus majority in the Parliament still allowed the adoption of key decisions without the need to seek consensus and negotiations between different elite groups. This dynamic reproduced by My Step elite is reminiscent lack of involvement of the opposition in the decision-making process seen in the Constitutional reform.

The same trend continued being relevant in the current Parliament and leads to limitations in the inter-constitutional accountability. The different measures applied by Pashinyan government in order to replace the Constitutional judges, illustrates the way in which political conflict is transferred to formally impartial institutions. Judges and other independent bodies are instrumentally used by the current or former governing elite, as a tool that would support their claims in the process of policy-making, rather than guarantee effective checks and balances. The control of all institutions relevant for horizontal accountability by the governing elite leads to a toothless form of accountability. The domination of RPA elites since 1998, led to significant violation of the political and civic freedoms of social groups and to a situation of extreme inequality due to their limited access to state institutions. From this perspective, the demand for justice of the responsible for the suppression of the 2008 protests by Pashinyan government is an expression of its effort to find justice for the past violations.

For the parliamentary system to fulfil its potential in terms of democratic deepening, it is required to overcome the challenges posed by the weak political parties, and the ineffective and zero-sum based political competition. Therefore, the 2018 revolution would be meaningful if it brings greater opportunity for political competition and participation. And for this goal, the degree of compliance of the new elite with the Rule of Law is essential. If the establishment of stable and plural parliamentary system is a goal in itself, it is possible that the current trend of democratic strengthening is maintained. However, if the institutional reforms are instrumentally used and adapted to the interests of the majoritarian elite, as was the case of the RPA and more significantly of the 2015 Constitutional reform, then democratic and inter-constitutional accountability will be used to limit the access of opposition forces to decision-making and to perpetrate the domination of the incumbent. The Table 2 summarises the main steps of the causal mechanism developed in terms of institutional reform, domestic competition, social participation and influence of the EU and Russia on this process.

Regarding the international dynamics, a limitation of the analysis of the Venice Commission was the impossibility to link the institutional features of the system with the domestic trends of competition and participation. Given the support of the EU for the Venice Commission positions and the dependence of the EU conditionality on them, both international actors were negatively affected by this analysis, which showed close alignment with the Constitutional Commission. In spite of the efforts of international and CSO actors to promote domestic dialogue on the reform, they have not managed such outcome due to the top-down features of the process. In spite of the doubts of both domestic and international actors, RPA domestic elites successfully adopted the parliamentarian system for their instrumental goals. In

this way, it is clear that international socialisation and the limited conditionality applied by the EU in this case were not effective in preventing the cost-benefit calculations of domestic elite. Currently the same discourse is used by My Step domestically and it also aligns with the party interests given the delegitimization in this field of RPA. Therefore, given the broad majority of My Step in the Parliament at the short term the effective development of inter-constitutional accountability in the country depends on the real intentions behind the democratisation discourse of the elite. The pressure exerted on the Constitutional Court at the end of 2019 is a reaction to the resistance of former elite to democratic change and of the desire of My Step to have better representation in this institution.

From a normative perspective, the democratization discourse has been used by RPA and My Step government to advance technical and economic cooperation with the EU, while separating domestic institutional reforms from Armenia's geopolitical alignment with Russia. Armenia has mobilised this normative discourse at the international level, differentiating it from military and economic alignment in order to have access to the incentives provided by both the EU and Russia. This strategy has been successful, as the EU increased its economic support, while Russia remained in a vigilant position without greater involvement. Therefore, it is interesting that the democratisation discourse has been combined with the national pro-sovereignty claims that match both the domestic Armenian cleavages and Russia's support for "sovereign democracy" described above. As a consequence Armenia continued belonging to the geopolitical and geo-economic sphere of Russia. Therefore, it is possible to conclude that Armenia successfully uses the different resources provided by the main regional actors, in spite of its vulnerability and high dependence on Russia. This diversification in its foreign policy might provide useful resources for reducing its high level of dependence in the future.

The case of Armenia provides an interesting insight regarding the strategies adopted by the EU and Russia, as both appear to commit to greater flexibility and adaptation to the needs and demands of Armenia, while maintaining at least formally the respect to normative goals. It was confirmed that the EU has not used in the optimal way the democratic conditionality during the AA/DCFTA negotiations that took place in the aftermath of the 2008 protest repression. Limited improvement in the field of media freedom and assembly after 2010 did provide space for the social protests that put additional pressure on the government. However, given that the AA/DCFTA is the most important "carrot" of the EU, its use had limited consequences. The links between the EU support for the Venice Commission opinion on the Constitutional reform might have affected negatively its image as well in the country. On the

other hand, the EU showed important degree of adaptation in negotiating the CEPA, which provides a fruitful basis for democracy promotion and modernisation.

The support of Russia on the other hand, is linked to Armenia's high dependence on its military, energy and economic resources. This trend was reinforced during the RPA government and was successfully used by Russia for directing the foreign policy choices of the government. Besides, the case of Armenia illustrates that a relatively smaller and highly-dependent country, whose mere existence is challenged by the Nagorno-Karabakh conflict, is able to take advantage of the incentives offered by the two competing regional frameworks, offered by the EU and Russia. On one hand, Armenia readily follows the regional geopolitical alignment according to Russia's interests. Given this certainty, on the other hand a normative entrapment around the idea of the sovereign rights of democratic and economic development has allowed the government to pursue democratising reforms, which potentially might strengthen political competition and participation, while benefiting from the economic and security involvement of Russia. In addition, the above analysis showed the essential role played by linkages between political and economic elite from Armenia and Russia.

Independent variable	Contextual propositions 2008 - 2013	Causal propositions 2013 - 2018	Outcome (institutions)
State existence threatened by external conflict	<b>Centralized semi-presidential system</b> Top-down decision-making. Political control of the Constitutional Court and other independent bodies Limitation on freedom of expression and assembly Ineffective check and balances due to competition trends	Constitutional reform to rationalized parliamentary system 2014-2015  Sargsyan election as PM triggers social protest	Rationalized parliamentary system, but controlled by sur-plus majority and pressure for <i>lustratsia</i> in independent institutions
High Ethnic homogeneity	<b>Political competition</b> Dominant party (20 years in government) supported by fake or weak opposition. Sur-plus majority governments Isolated, fragmented, insignificant (8MP) opposition – zero-sum relations. Nationalist parties.	CC dominated by executive and the RPA. Use of public and private resources against opposition make impossible to implement rights.  Unconventional participation by the fragmented opposition	Pashinyan charismatic leader with sur-plus majority and very limited capacities of the opposition No geopolitical changes, while claims additional support for
Digital media	<b>Limited social participation in top-down governance</b> 2008 -2013 Increase in unconventional social participation, Informal, volunteer based, horizontally structured, [...] loosely organized more legitimate and successful than political parties and internationally-funded NGO	No front - CSO, civic movements and opposition. Ineffective public debates organized by CSO and IO Party fragmentation based on FP.	Broad social support, including fractions of the Church and even the military.
EaP created, AA/DCFTA negotiations	<b>AA/DCFTA negotiations</b> concluded in 2013, without significant change in citizens' rights or any political costs for the domestic elites – Reduced credibility	No international pressure for reforming the system Closest collaboration with the Venice Commission Very positive opinions. (EU aligned)  OSCE/ODIHR criticized the referendum results (EU aligned)	The EU-Armenia cooperation <b>focuses on democracy and increases its support</b>
Economic and military dependence on Russia	<b>2013 Russia pressure for EEU integration</b>	EEU membership agreement 2014 Transfer of Armenia's assets to Russia  CIS observation mission legitimized the referendum	Russia considers it is domestic issue of Armenia, protection of the elite

Table 6. Causal mechanisms in interinstitutional accountability Armenia 2013 – 2018.

## ***VIII CHAPTER. GEORGIA***

### ***I. CONSTITUTIONAL REFORM PROCESS IN GEORGIA 2008 – 2012***

The Constitutional reform was announced by Saakashvili one year after wave of protests in 2007. It sought to rebalance the system, to open the institutions for greater social and political involvement and recover the citizens' trust in the institutions (Civil Georgia, 2008). The need to reduce power concentration and to increase the accountability of the executive were made obvious by the opposition's boycott of the parliament and of all UNM initiated projects. In addition, the reform was also a response to the demands of the United Opposition Group for Constitutional amendment and the replacement of the mixed electoral system with a proportional one. Until today the electoral system is among the most polemic and controversial changes (Civil Georgia, 2009a). Furthermore, in 2008 the relations with Russia suffered the most important deterioration since Georgia's independence, due to the reactivation of the secessionist conflicts in South Ossetia and Abkhazia. However, the motivation behind the reform remains a controversial issue. Some members of the opposition, the Constitutional Commission and former UNM members, when interviewed noted the possibility that the ruling party officials to a certain degree aimed to achieve continuity of UNM elite (Interviews 18, 29, 31). The announcement of the reform during the second term of Saakashvili, reinforced such accusations.

Saakashvili announced in September 2008, during his state of the nation address, that the government will pursue deep political reforms in order to “have stronger parliament and more effective means for control and oversight between the branches of government [...]; to make media more free and unbiased and to make judiciary more just and independent” (Civil Georgia, 2008). Therefore, the main purpose of the amendment would be to balance the different branches of power, strengthening both the Parliament and the Judiciary. A no-confidence vote would be among the new legislative prerogatives. In June 2009 a Presidential order set up the State Constitutional Commission (SCC), which included a list of the academics and members of political parties, CSO and institutions. It was chaired by the constitutionalist Avtandil Demetrashvili (President of the Republic of Georgia, 2008).

The Charter of the Commission was adopted two weeks later. None of the documents included any specific instructions on the draft. Therefore, the process was relatively open to alternative models. However, given Saakashvili's 2008 statement and the fact that the reform was initiated in a centralised presidential system, it was clear that the transition will be towards

a semi-presidential or a parliamentary system. The initial preference of the Chairman was a parliamentary system with a reinforced presidential role (Interview 29). The initial stage of the reform, between July and October 2009, consisted in 40 meetings for the discussion of the general direction of the reform. According to some participants, this period was dominated by academic and very open-ended debates, which however ended without any specific conclusion on the future form of government. Therefore, the commission decided to elaborate three drafts (presidential, semi-presidential and parliamentarian).

In parallel, the main opposition parties boycotted the Constitutional reform, reducing in this way its representativity and legitimacy. Only a few of the long list of invited parties attended the Constitutional Commission. Furthermore, a parallel Public Constitutional Commission (PCC) was established by the constitutionalist and Republican party member Vakhtang Khmaladze. It was known that the PCC was working on an alternative Constitutional draft of a parliamentary system. Therefore the GIZ expert, Wolfgang Babeck, who was directly involved in the reform, suggested that, in case three versions are adopted, the PCC draft could be adopted as the parliamentary alternative (Babeck, Fish and Rechenbecher, 2012). This suggestion sought to promote cooperation between the two commissions.

The second drafting period took place between October 2009 and March 2010, when a final, realistic and complete draft was elaborated. This draft was praised as a very good document, much more systematic and clearer in comparison to previous versions. However, the GIZ expert accompanying the reform noted that this draft was prepared behind closed doors by the SCC secretariat, as it was not fruit of its daily work. From this draft were removed hypothetical and unrealistic considerations from the previous stage, as life-tenancy of the President and bicameral Parliament. This first draft suggested the adoption of a parliamentary system. However, the Secretary of the SCC had a strong preference for the semi-Presidential model and advocated for rationalising some of the elements of the parliamentary system, leading to the drafting of a second draft (Babeck, Fish and Rechenbecher, 2012; Interview 29).

The second draft was presented in March and it addressed some of the critiques raised by international observers. In March 2010 the GIZ expert emphasized that alternative wording had to be adopted on the “indirect election of the President, [...], the Parliamentary investigative committee, the vote of no-confidence, the budget” and the local self-government” (Babeck, Fish and Rechenbecher, 2012: 102). However, some of these considerations were never included. In parallel, the PCC published its draft concept that did not include specific amendment’s, but instead was a conceptual suggestion regarding the basic distribution of

power and competencies among the state institutions, including a detailed considerations of the check and balances to be developed. Some suggestions of the PCC are reported to have been included in the SCC as the Investigative Committees. However, other aspects as the vote of no-confidence were not influenced by the PCC draft. Due to the similar political systems developed in PCC concept and in SCC draft, international experts continued insisting on drawing from the PCC proposals. However, this happened only to a limited extent (Babeck, Fish and Rechenbecher, 2012: 102; Interviews 29 and 30).

The final draft of the SCC was elaborated at a Conference organised in Berlin in July 2010 with the support of the GIZ. Vahtang Khmaladze, the representative of the PCC and CSO representatives also attended this conference. Subsequently, the SCC adopted the draft for constitutional law on the amendments the 19 July 2010. The Venice Commission issued consecutive opinions the 31 July, the 28 September and 01 October, while the Parliament adopted the text at first reading the 24 September and at second and third reading the 01 and 02 October respectively. This evolution illustrates a somehow hasty process, as the amendments were adopted according to the calendar of opinions provided by the Venice Commission, while domestic discussions were more limited.

The Constitutional amendment shifted the system closer to a parliamentary model, which has been defined by domestic analysts as “super-rationalised” parliamentary system (Gogoladze, 2013). The President’s prerogatives were reduced at the expense of a leading role adopted by the Prime Minister. The President no longer conducts and implements domestic and foreign policy and he is not anymore, the head of the government. Both domestic and international observers identified a potential source of conflict in the foreign policy competences of the President and government, and recommended greater separation and clarification of the role to be played by each institution (Sorensen, 2010; Venice Commission, 2010). Specifically, the government is responsible for implementation of Georgia’s foreign policy (Art. 78.1), while the President will “negotiate with foreign states and conclude international conventions and agreements with the consent of the Government” (Art. 73). The President however does not have the administrative capacity and does not direct the Ministry of Foreign Affairs. Secondly, the Constitution also states that “the President of Georgia represents Georgia in foreign relations” and “Prime Minister and Ministers represent Georgia in foreign relations within the scope of their competence” (Art. 73 and 78). The lack of clarification of these norms led to institutional conflicts when they were implemented.

After the amendment the President cannot suspend or abolish legal acts of the government, even when they are contrary to the Constitution. He/she cannot dismiss on his/her

initiative the government or any ministers as before and his/her consent was not anymore required for the approval of the State Budget. The legal acts of the President require a countersignature of the Prime Minister in a number of cases defined in Art. 73<sup>1</sup> of the Constitution. This regulation clearly illustrates the subordinate position of the President. The President also lost his right to initiate legislative proposals and the Parliament can overrule his veto with simple majority, rather than with two-thirds as before (Nodia 2017). His/her veto on organic laws can be overturned “by an absolute majority of all deputies, and a Constitutional law by a three-quarters majority of all deputies” (Elgie and Moestrup, 2016: 127). The President has assumed the role of a neutral arbitrator between the institutions (Gogoladze, 2013) and “a guarantor of the continuity and national independence of the state and of the functioning of the democratic institutions” (Venice Commission, 2010). However, this last role of the President was, criticised by the GIZ expert, due to its overlapping with the role of the Constitutional Court (Babeck, Fish and Rechenbecher, 2012). A requirement for running as a Presidential candidate is the residence in Georgia for a minimum of 5 years and the last three years, which was also criticised by GIZ experts (Babeck, Fish and Rechenbecher, 2012).

The government became the head of the executive and adopted the corresponding powers. It conducts domestic and foreign policy, while being accountable to the Parliament, rather than to the President as before. The Cabinet has a collective responsibility and if the Prime Minister is dismissed, this affects the whole cabinet. The Prime Minister coordinates the activities and the general directions of the government. The Parliament, on the its side, elects the Prime Minister, who dismisses and elects all other ministers. The budget submission became an exclusive competence of the government after all Presidential prerogatives in this field were removed (Gogoladze, 2013). The government has a central role in the design and adoption of the budget, leaving the Parliament at a secondary position. In this way, the consent of the government is required in order for the Parliament to add or cut expenses. The Venice Commission criticised that the Parliament’s role is too limited, given that the initiative and all changes to it are done or approved by the government (Venice Commission, 2010).

The no-confidence vote remained one of the main weaknesses, as the procedure became more complex, more difficult to achieve and lengthier. It can be suggested by two-fifths of the Parliament’s members, as opposed to one-third of members before the amendment (Berglund 2014; Civil Georgia 2010). However, after this first step, the initiation of the vote of no-confidence needs to be approved by a majority of all MP, which de facto gives another veto power to the majority. The next step takes place one month later and consists in a required vote of new Prime Minister by the majority of MP. In addition, the President can veto the vote,

which can be overturned by three fifths of MPs. This procedure defined by long deadlines and high voting majorities was criticised by domestic and international experts including the Venice Commission and the GIZ, because it *de facto* protects the Prime Minister. Furthermore, it “gives too much power to the President and diminishes not only the power of the Parliament, but also the political responsibility of the Prime Minister that should be the cornerstone” (Venice Commission, 2010; V. Menabde, 2017: 82). The vote of no-confidence can be prolonged up to three months with all the extensions, which does not fit the urgency usually attributed to this procedure (Babeck, Fish and Rechenbecher, 2012; Vakhtang Menabde, 2017). This is one of the reasons why the system was defined as mixed (Venice Commission, 2010), “super-rationalised” (Gogoladze, 2013) or as prime-minister-presidential (Menabde, 2018).

Concerning the difficulties in the negotiation of the no-confidence vote, the GIZ expert pointed out that “international advice is compromised if key aspects of the reform are non-negotiable or when the overwhelming international advice [...is...] rejected” (Babeck, Fish and Rechenbecher, 2012: 86). The unwillingness of the Constitutional Commission to adapt the Draft according to the international advice on key aspects as the no-confidence, indicates their intention to establish a more stable executive-centred model of governance, rather than the alternative parliamentary system prioritised by the PCC. Furthermore, this case presents a similar trend as the one observed in the Georgian Rule of Law reform (Chapter V), when key aspects that provide access to the main institutional positions are not reformed according to the Venice Commission recommendations with the explanation that this is a political decision.

Besides, the Constitution improved the rights of the minority through the possibility for one fifth of all MP, rather than one fourth, as before to establish an investigative or temporary commissions (Republic of Georgia, 2010: Art. 56). However, the actual implementation of this norm is dependent on the Regulation of the Parliament, which required the approval of the majority of MP of such initiative. Consequently, the effective exercise of this right was not possible, due to the veto power of the parliamentary majority. For instance, in the period between 2004 and 2013 - 25 requests for such commissions were filed and only four were approved (two before the 2010 Constitutional reform and two after 2010 reform) (Vakhtang Menabde, 2017b). This provision was criticised by the Venice Commission prior to the approval of the Constitutional Draft (Venice Commission, 2010). However, it did not lead to any significant change in the way the legal development of the Art. 56 of the Constitution. This example shows how more democratic norms are adopted at the constitutional level, but their actual implementation is made impossible by inconsequential legal development and implementation.

The executive also selects and dismisses the local governors, who are accountable to the central government. Therefore, the autonomy of the local administration is very limited and subordinate to the central government. The change in reference to the previous system is that the local governors are now selected by the government, rather than by the President. In spite of the introduction in the Constitution of the Chapter VII on local authorities, their status has not changed significantly. The Venice Commission concluded that “the level of constitutional entrenchment [of the local authorities] which would be brought about by these amendments is insufficient” (Venice Commission, 2010: 15). In spite of the inclusion of all the relevant principles of self-government in the Constitution, the leading role of the “elected authorities” is not clearly established. The Constitution does not indicate clearly the competences and resources to be delegated or transferred to the local level. Therefore, the local administration remains subordinate and dependent on the central government. After this Constitutional amendment the local authorities can apply to the Constitutional Court as well. The power and status of the Constitutional Court were not amended in any other significant aspect. It became the only institution to deal with the legal procedure of impeachment, taking away all responsibility from the Supreme Court. In addition, the Chair of the Constitutional Court can be re-elected, which was criticised by domestic actors (Gogoladze, 2013).

In spite of the domestic criticism, the 2010 Constitutional reform was welcomed by the Venice Commission, which stated that it “provides for several important improvements and significant steps in the right direction [...] nevertheless it would be desirable to further strengthen the powers of the parliament” (Civil.ge 18/10/2010). The Venice Commission recommended a reinforcement of the “powers of the parliament”, focusing “on the formation of the government and especially those on the motion of no-confidence, as well as those about the parliament’s powers in budget matters” (Venice Commission, 2010" 16). The parliament passed the amendments the 15 October 2010, the same day, when the Venice Commission adopted its opinion, which further illustrates the criticism against the greater accountability towards international actors than to domestic opposition or CSO. The new Constitution entered in force upon the inauguration of the next president in 2013. Lastly, the government, considered the possibility to move the Parliament to Kutaisi, in order to “depoliticize Tbilisi” (Babeck, Fish and Rechenbecher, 2012: 82). This decision was adopted in 2011 and applied after the 2012 elections. However, such decision illustrated to what extent the constant protests affected the Georgian political life and how unconventional social participation is displaced outside the political centre of the country in an effort to reduce its impact.

## ***V. IMPLEMENTATION OF THE REFORM AND IMPACTS***

The credibility of Saakashvili was significantly reduced after his second mandate, which led to the victory of the recently established Georgian Dream party in the 2012 Parliamentary elections. As a consequence the period between 2012 parliamentary and 2013 presidential elections was defined by the cohabitation between the UNM President Saakashvili and the Georgian Dream cabinet led by the wealthy businessman Ivanishvili. The main conflict between the two administrations referred to an amnesty law on the political prisoners that Saakashvili's government considered as having committed serious crimes including spying for Russia. Other issues of confrontation included the nomination of members of the High Council of Justice and the legal reform of the Judiciary, which Saakashvili tried to veto. The jurisdiction of the State Security Service led to another conflict (Elgie and Moestrup, 2016).

After the transfer of power to the Georgian Dream coalition in 2013 another Constitutional reform was initiated under the leadership of the Chairman of the 2010 PCC, Vakhtang Khmaladze. It suggested the model of the former Public Constitutional Commission for a parliamentary democracy. However, this reform was not supported by the majority, due to the last-minute unwillingness of the opposition to support the initiative (Interview 30). As domestic analysts conclude this dynamic is an indication of “a serious problem of consensus and inclusiveness” (Menabde, 2018: 23). A Constitutional amendment and transition to a Parliamentary system was adopted in 2017 when the Georgian Dream had secured a constitutional majority in the Parliament. On this occasion, the opposition also left the Constitutional Commission which confirms the conflictual dynamics of domestic competition.

Therefore, the reform entered in force after the 2013 Presidential elections, when Saakashvili's opponent Margvelashvili was elected. Margvelashvili was supported by the Georgian Dream and the oligarch Ivanishvili, who built his initial fortune in Russia (Hale 2015). However, almost after his election, Margvelashvili expressed differences with certain members from the Georgian Dream party, including with Ivanishvili. Eventually, these differences became an open confrontation with the government and the parliamentary majority and in 2013 Margvelashvili vetoed the law on the Criminal procedure. However, the main source of conflict between the President and the Prime Minister were the foreign policy competencies, because the Constitution included that they both represent Georgia “within the terms of their competences” (Elgie and Moestrup, 2016: 138). This uncertainty led to tensions regarding the signature of the Association Agreement. The control of the National Security Council led to another polemic, given that the government tried to shift “responsibilities to the new, non-constitutional State Security and Crisis Management Council headed by the prime

minister”. Furthermore, the appointment of the Supreme Court judges was another source of conflict, when in 2014 the Parliament “voted down two of the President’s nominations” (Elgie and Moestrup, 2016: 139). Margvelashvili tried to veto several initiatives of the government, including the 2017 Constitutional reform, due to the delay in the adoption of the fully proportional electoral system (Agenda.ge, 2017a). In addition, he developed more cooperative relationship with the opposition (European Georgia) and CSO than with Georgian Dream.

This challenging relationship was interpreted by the ruling elite and certain academics as an institutional opposition based on the electoral legitimacy of both the government and the President (Interview 25). Consequently, it was commonly accepted that such contradiction had to be removed and in 2017 the Georgian Dream government adopted a new constitutional reform, which replaced the direct presidential elections with parliamentary designation by a special commission (Ruthrauff, 2017b). In 2017, following the suggestion of Khmaladze, the new Constitutional amendment established that the “president should be selected by the 150 lawmakers plus 150 representatives of local government” (Fuller, 2017: 9). This change for many was a consequence of the difficult relation between the President Margvelashvili and the Georgian Dream, while others saw it as an effort to balance the political system.

Importantly, the role of the Constitutional Court was politicised in 2016, when it dealt with several polemic cases. One of the cases referred to the trials against members of the Free Democrats party, which was in the initial coalition of the Georgian Dream. Accusations of misappropriation led to the resignation of key figures of the Free Democrats party and their removal from the governing coalition in 2014. Other cases are the nine-months pre-trial detention of Gia Gvilava and the case for the ownership of the pro-UNM TV channel Rustavi 2. In all these cases constitutional judges were accused of delaying the final decision.

In parallel, the Chairman of the Constitutional Court Giorgi Papuashvili and other constitutional judges publicly announced that they are subject to political pressure regarding these cases. As a reaction the Minister of Justice claimed that Papuashvili is a member of the United National Movement. She added that “she aimed at ending the political epoch of the National Movement and of one of its members, the President of the Constitutional Court” (Georgian Democracy Initiative, 2016). The Venice Commission noted that such declarations and “public calls from the executive to terminate the mandate of the President of the Constitutional Court, [...] risk undermining the authority of this Court” (Venice Commission, 2016c). These cases illustrate the way in which the Constitutional Court is instrumentalised in the struggle for power between different political branches.

Lastly, in spite of the identification of the need of more media freedom as a motivation of the reform in the state of the nation address of Saakashvili in September 2008, no significant changes were by the adoption of the Constitutional reform, as it did not affect in any significant way this field. However, it's reported that in 2010 the media environment was more open. The opposition claimed that the public television had a pro-governmental bias. The lack of transparency in media ownership was a constant criticism until 2012, when the government made compulsory the public transparency of media ownership. It also banned media ownership by offshore companies. In addition, the satellite broadcasting of the opposition TV Maestro has received positive assessments. Certain degree of media pluralism was reported in spite of the fact that the different media favoured specific political parties (Freedom House, 2012).

In conclusion, the analysis of the reform and of its implementation shows that it can be considered as an improvement in comparison to the previous centralised presidential system. However, certain institutional features as the vote of no-confidence, the budget management, the investigative or temporary commissions and local government allowed the government to effectively avoid strict control from the Parliament and more specifically from the opposition. Some of the challenges against an effective opposition and/or Parliamentary accountability were introduced in the Constitutional text or were included in the legal development that followed. Therefore, the system established by the 2010 Constitutional reform was defined as mixed, prime-minister-presidential model. The accountability was to a certain degree toothless, given that the use of key control mechanisms by the opposition were effectively rendered impossible. In addition, the politicisation of the Constitutional Court and the frequent constitutional amendments without any broad political consensus illustrated the way in which institutions are used as tools for political struggle, rather than normative actors. Furthermore, the competition dynamics involved in the reform process and in the period of its implementation and subsequent reform illustrate how the political conflict materialises in the (self-/)exclusion of the opposition from the process and the reform once the same achieves majority. This lack of consensus-making and exclusive policy-making shows how the conflictual political culture translates in recurrent and instrumental constitutional changes.

### ***III. CONTEXTUAL FACTORS***

As regards the contextual factors that affected the reform it is important the transition in Georgia was defined by centralising institutional and social trends. This tendency is similar to the one observed in Armenia, but it is less pronounced in the case of Georgia. In 1995 Eduard Shevardnadze, the former First Secretary of the Georgian Communist Party and Foreign Minister of the Soviet Union, managed to remove the main militarised groups of the very

violent civil war that dominated Georgia since 1990. Consequently, the first Constitution was adopted as the outcome of a very consensual decision-making process. It established a more balanced presidential system, which limited to a certain degree the centralisation of power. The President used to appoint the regional governors and members of the government, while the ministers had to be approved by the Parliament. The President also appointed three out of nine judges of the Constitutional Court (Gönenç 2002). However, in 2004 Shevarnadze did not count with the support of the state administration and his government was removed by the Rose Revolution. The main difference between Georgia and Armenia is the weakness of the state structure in Georgia, which has undermined the autocratic trends of government and reinforced the influence of social opposition (Way 2009: 113-116).

In 2004 Saakashvili's government adopted a Constitutional reform, which transformed the country in a presidential democracy, giving the President significantly more opportunities to influence the legislative. The President had the power to appoint and dismiss the ministers of defence, interior and security, as well as veto power over other ministerial positions. The President also chaired the government, appointed the Prime Minister and gave his consent for the submission of the Budget to the Parliament. The Assembly lost its capacity to "initiate laws that affect government expenditures" (Stefes 2006a: 57), while the President gained the prerogative of issuing decrees with legal effects. In addition, the President could approve the state budget if the Parliament fails to do so (Gogoladze, 2013). The dismissal of the Parliament by the President was subject to certain conditions, as a) the adoption of a no-confidence vote; b) failure to approve the head of government; or c) failure to approve the state budget (Stefes 2006a: 57). The local government was completely dependent on the central one and was regulated by a Constitutional Law, rather than by the Constitution.

The legal review of constitutionality was exercised by the Constitutional Court, which comprised three members selected by the President, three - by three fifths of all MP and three members appointed by the Supreme Court (Republic of Georgia, 1996: Art 88). The 2004 reform changed the competencies of the Constitutional Court regarding the referendum and elections. As in the case of Armenia, prior to that the Constitution allowed the Court to declare elections unconstitutional on the basis of "factual circumstances so that the issue of the constitutionality of the regulating norms was not raised at all" (Khetsuriani, 2010: 49). In 2001 the Court concluded that the majoritarian election in two regions "were held in violation of Art. 49 (1) of the Constitution", which led to the repetition of the elections in the respective regions (Khetsuriani, 2010" 48). However, the 2005 Constitutional reform abolished this prerogative of the Constitutional Court and it examines "issues of the constitutionality of an election or

referendum only in cases in which a relevant subject concurrently challenges the constitutionality of the [regulating] norms” (Khetsuriani, 2010: 49).

A second difference between Armenia and Georgia is that presidential changes in Georgia are paralleled by a shift in dominant elites and parties. The transfer of power in 2004 led to an effective change of the political elite, while in Armenia any efforts for such renewal “was met with fierce opposition of entrenched interest groups” (Kupatadze 2016: 15). Saakashvili’s government benefited from a significant electoral majority (96,3% of all votes in 2004). This was a victory of the 2003 Rose Revolution as a combination of the opposition political parties, activists of civic movements, media and many representatives of the professional and cultural elite. The core of the United National Movement was formed around a “young reformist wing” (“New Reformists” of Shevardnadze’s governing party), which benefitted from increased social activism. Many civil society representatives after the Revolution integrated in the institutions to the degree that Saakashvili’s government “was sometimes called an NGO government” (Nodia, 2013: 34). Among these organisations were the Georgian Young Lawyers Association (GYLA), Open Society - Georgian Foundation, the Liberty Institute, Alpe, the CDIC and the Caucasus Institute for Peace, Democracy and Development (Khutsishvil, 2008; Muskhelishvili and Jorjoliani, 2009). Some social activists and parties (Republicans and “New Rights”) withdrew from the government after the first UNM mandate (2004–2008) (Khutsishvil, 2008).

The first Saakashvili government implemented successful anti-corruption reforms that were possible, due to a great extent to the radical break with the past elite (Stefes 2006a: 54). Its main achievement was the significant reduction of petty-corruption in sectors that citizens experience in their everyday life (Kupatadze 2016: 16). However, these bold reforms required the concentration of power in the executive, which had negative consequences as the blurring of boundaries between the state and the governing party (UNM) and the lack of check and balances between the different power branches. Consequently, both domestic institutions (the Public defender) and international entities (ECHR) recognised that “neither the legislative nor the judiciary branches of power are currently able to fully counterbalance the power of the executive branch” (Bertelsmann Stiftung 2016b: 9). These broad prerogatives over the legislative and the judiciary, in combination with the wide parliamentary majority (96% of the votes) implied in practice that the executive controlled norm selection, adoption, implementation and enforcement. The UNM controlled also the local administration, which made it the dominant actor during its first mandate (Hammarberg, 2013: 5).

Key aspects of Georgian domestic competition is that the presidential institutional framework strengthens the centralisation and personalist trends in the party system, as well as opposition fragmentation (Turovsky 2011; Hale 2015). The incumbent demonstrates relatively stable political positions for at least two mandates. The opposition is fragmented and faces different hindrances posed by the incumbent party-in-power, which is supported by the instrumental use of the state apparatus and other private actors (Hale 2015). Political leaders are often linked to clientelist networks (Kitschelt *et al.*, 1999; Levon Lortkipanidze, 2016).

These weaknesses were clearly reflected during the second mandate of the UNM-led government which began in 2008 and was supported by 59.1% of votes. In the domestic domain, the power centralisation in the hands of the UNM was used for sanctioning potential opponents, while not disciplining loyalists to the regime (Berglund 2014). As a consequence of this negative trend, Georgia's Freedom House Index increased from 3 to 4 between 2007 to 2009 (Freedom House, 2017). The subordination of the executive led to the domination of the UNM political goals over the citizens' rights, as they did not have any possibilities to influence the decision-making process. Consequently, 2007 and 2008 were dominated by deep political crisis, triggered by the arrest of former UNM member and defence minister Irakli Okruashvili for the abuse of power, extortion and money laundering. This arrest followed Okruashvili's announcement for founding an opposition party, the Movement for United Georgia, as he challenges Saakashvili's integrity. The protests organised by the opposition parties were suppressed with brutal police violence and the government imposed a state of emergency (Jawad, 2008). The private televisions Imedi TV and Kavkasia TV were suspended. Imedi TV was allowed to reopen only the day of the campaign for Presidential elections, announced after the state of emergency (Jawad, 2008; Freedom House, 2009). The state of emergency and the arrests of opposition leaders were justified by Saakashvili with a presumed Russia's involvement in the protests (International Crisis Group, 2007).

The domestic protests against the UNM government were further reinforced in 2008. The presidential elections took place at the beginning of 2008 and Saakashvili was supported by 53% of all votes. Parliamentary elections in May 2008, provided a majority to UNM with 63% of the votes, which due to the mixed electoral system translated in 109 out of 150 mandates. On the other hand, the United Opposition group, which was launched by Okruashvili and continued by Levan Gachechiladze, received approximately 15% of all the votes (Deutsche Welle, 2008). The United Opposition group, built up on the basis of the 2007 protests was formally established in January 2008, when 12 opposition parties called for holding "permanent protests" that would start in February and will continue until 2012 (Akhmeteli, 2008).

After the parliamentary elections, these opposition parties and former UNM members, as Salome Zourabishvili began a boycott of the Parliament (Antidze, 2008), which was effective until the adoption of the Constitutional amendment and the next parliamentary elections in 2012. This boycott led to the establishment of several new parties, which initially unified, due to their opposition to Saakashvili's government, and in 2012 integrated in the Georgian Dream coalition. This would be the case of Abkhazia's Free Democrats, or Zourabishvili's "The Way of Georgia" party. In summary, street protests and institutional boycott by the opposition was the background against which the 2010 Constitutional reform began and was developed. Street protests were recurrent in the period of drafting and approval of the Constitutional reform (2008 – 2010). This circumstance undoubtedly affected negatively the reform process, its outcomes and its legitimacy.

Regarding the international relation of Georgia, it is important that the Constitutional reform was initiated by Saakashvili one month after most recent historical juncture in this field - the 2008 Russian intervention in South Ossetia and its support of the independence of Abkhazia. This military intervention represents the worst point in the relations between Georgia and Russia. The deterioration of Georgia-Russia relations began with the 2003 Rose Revolution, which was seen by Russia (together with 2004 Orange Revolution) as the Western meddling into its sphere of interest and a potential source of 'contagion' to Russia's political developments (Korsunskaya 2014). The involvement of Western-funded organisations inspired many domestic and international actors to see diffusion of the Serbian social movement which ousted Milosevic. Among these organisations were the Liberty Institute, Kmara, ISFED, Fair Elections Foundations (Bunce et al. 2010). Due to the realist interpretation of the regional balance of power and the potentially negative effects on Russia's sphere of influence, Western democracy promotion is "seen by Russia as a geopolitical tool used [...] in contestation with Russia" (Delcour & Wolczuk 2015: 467). The declared intentions of EU and NATO integration of Saakashvili were interpreted in zero-sum geopolitical terms by Russia. As a consequence Russia used its leverage on Georgia and increased the energy prices, trade sanctions and reformed its migration policies. The nearly 50-times increase in gas prices between 2004 and 2006, "from \$50 to \$235 per thousand cubic meters", was explained by Russia as normal, "designed to bring Georgia in line with prices charged to Moscow's West European purchasers" (Newnham 2015: 164). The refusal of energy loans and the pressure exerted on Georgia to sell its pipelines to Gazprom illustrate how Russia capitalises its comparative advantage for consolidating its geo-economic positions (Makarychev 2018: 13).

The quality of Georgian products, traditionally sold in Russia, started to be questioned too and they were subject to long customs inspections. In 2004 the import of Georgian wine and other products as mineral water and fruits was interrupted. As a consequence, Georgian exports to Russia in 2009 represented only 13% of their values in 2005. In addition, in 2006 Russia undertook a campaign for expulsion of Georgian workers (Newnham, 2015). The ECHR Judgement Georgia vs Russia concluded that the deportation of 2300 Georgians “had been arbitrary” and “had been a coordinated policy of arresting” (Civil Georgia, 2015a).

Russia also used imposition and military power to support secessionist efforts of the breakaway regions in South Ossetia and Abkhazia. In August 2008, after the Bucharest NATO summit where Georgia was promised membership, a five-days armed conflict unfolded between Georgia and South Ossetia. It involved Russian military intervention, which began the 8 August. The 10 August Georgia “declared a unilateral ceasefire” and by 11 August it had withdrawn its forces. However, Russian troops “entered deeper into Georgian territory by crossing the administrative boundaries of both South Ossetia and Abkhazia and set up military positions in a number of Georgian towns” (Tagliavini, 2009: 21).

Russia’s intervention mimicked NATO’s explanation regarding the need of peace enforcement intervention in Kosovo, which previously Russia had repeatedly objected. In the past Russia opposed the use of humanitarian intervention in Kosovo, claiming that this can be a justification for the recognition of South Ossetia and Abkhazia. In addition, the idea of *Ruskyi Mir* was also included in Russia’s legitimization discourse, as the need to defend Russian-speaking minorities or compatriots in South-Ossetia. This claim is based on Article 61 of Russia’s Constitution, which “guarantees its citizens defence and patronage beyond its boundaries” (Tagliavini, 2009: 24). Such claims built on the previously developed policy of passportization, which consisted in “mass conferral of Russian citizenship and consequently passports to persons living in South Ossetia and Abkhazia” (Tagliavini, 2009: 18).

This intervention, as the one in Ukraine after the Maidan Revolution, shows the existential threat, which Russia represents for its neighbours. Russia provides security guarantees (direct military intervention), discursive legitimisation of the creation of secessionist enclaves, as well as economic support (through trade and economic incentives provided to South Ossetia and Abkhazia). In this way Russia contributed for the internal destabilisation of Georgia, which undoubtedly conditioned the political choices of Saakashvili’s government (Tudoroiu, 2012). In addition, this conflict de facto established

“pockets of autocracy”, which reduce the capacities to govern and real possibilities for EU-integration of the countries in the neighbourhood (Obydenkova & Libman 2015: 110).<sup>19</sup>

This negative leverage, however, had the opposite effect on Georgia geo-political orientation. The energy and trade blockades, as well as the military intervention reinforced Georgia’s efforts for diversification towards alternative markets (Demytrie, 2015; Bumbu, 2016). Georgia’s choice of EU membership was channelled through a stricter compliance with EU conditionality. Georgia has been “pushing ahead unilaterally over the years since the Rose Revolution of 2003 with a radical economic liberalisation and reform agenda” (Bolkvadze, 2016; Emerson and Kovridze, 2016: 2). Different interviewees described the adoption of effective and more advanced reforms (than the ones required by the EU) as a purposeful identity-building strategy that aims to present Georgia as a real democracy and a member of the same club as other EU states, and capable of being EU member. In this process of identity definition, Georgians invoke their belonging to the European democratic tradition from the beginning of the state’s history. In terms of state and identity survival the EU association is perceived as the only viable possibility, due to its respect to diversity and independent development (Interviews 17, 18, and 44). This identity is sustained also in opposition to Russia, which is presented as an occupier, invader and a threat to the national identity and territorial integrity of Georgia. This justification is fully represented in UNM party positions towards the EU and Russia, given its first-hand experience in managing the conflict and sanctions.

Against this background of domestic protests, opposition’s boycott of the institutions, Russian military intervention, and external sanctions, the 2010 Constitutional reform was announced, drafted and adopted. Given the weakening position of Saakashvili, this Constitutional reform had the potential to reinstate the credibility of the political system given both the domestic and the external attacks against it. However, this hostile environment and negative developments also undermined its credibility and legitimacy.

#### ***IV. DOMESTIC COMPETITION AND PARTICIPATION***

The Constitutional reform was announced in September 2008, one month after the August conflict in South Ossetia and against the background of recent domestic protests. When Saakashvili announced the reform, he invited the opposition parties to cooperate with these reforms and reminded them that, due to the security situation, “Georgia as never before needs

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<sup>19</sup> “A ‘pocket of autocracy’ is a geographically defined entity within a sovereign, internationally recognized, democratic or a semi-democratic state, which though the use of authoritarian means upholds de facto independence for a significant period of time” (Obydenkova & Libman, 2015: 110).

our unity and our cooperation” (Civil Georgia, 2008). However, such efforts to involve the opposition in the policy-making were dismissed claiming that “it was part of the authorities’ propaganda” (Civil Georgia, 2008). Reportedly, suggestions for Constitutional reform in the Parliament were voiced also by some opposition parties – the Christian Democratic Movement and the National Democratic Party (Babeck, Fish and Rechenbecher, 2012). In addition, a constitutional amendment was part of the 17-point memorandum issued by the United Opposition Group in January 2008 (Civil Georgia, 2009a). By initiating a Constitutional reform, Saakashvili also responded to these demands of the opposition.

Therefore, the Constitutional reform was to a certain extent a counterreaction to the criticism raised by domestic and international organisations due to the democratic backsliding. However, the most significant aspect in terms of domestic participation and competition is that even international experts underscored that the reform was defined by “almost an entire absence of the opposition” (Babeck, Fish and Rechenbecher, 2012: 96). The self-exclusion of the opposition from the reform process was based on the suspicion regarding the actual intentions of the government that was seen as trying to perpetrate its power positions. Even it has been pointed out that the “plan was very similar to what Putin did” (Interview 31). Many criticised the reform, on the basis of stipulations that Saakashvili was preparing to run for the post of Prime Minister. As a consequence, international advisors acquired key role in spite of their limited capacities in shaping the process. Therefore, as in Armenia the opinions of external actors as the Venice Commission or the GIZ might be used to legitimise decisions adopted without the domestic consensus-building processes.

The Constitutional amendment was also boycotted by the main political parties in the country, which rendered it less representative and consequently less legitimate. In spite of the inclusion of a long list of parties to be involved in the Constitutional Commission only a few attended. Furthermore, a parallel Public Constitutional Commission was established by the constitutionalist and Republican party member Vakhtang Khmaladze. Two affiliation networks of both Constitutional Commissions have been elaborated, in order to illustrate these trends of participation and competition (see Figure 2A, 2B and 3 below). Figure 2B represent a simplified version of the affiliation network of the State Constitutional Commission as the nodes with just one link have been excluded. The Figures show a much denser and bigger network in comparison to the Armenian one. The Constitutional Commission in Armenia was limited to 9 members, while in the case of Georgia the SCC reaches 56 members.

Importantly, the big SCC network is significantly smaller than its planned size, due to the rejection of 14 members of the non-parliamentary opposition to take part in it. This difference between the commissions in Armenia and Georgia illustrates the political features of the different reform processes. On the one hand, Armenian Constitutional reform follows a period of power consolidation of the Republican Party, reinforced by the inclusion of the opposition in the incumbent coalition. It is counterintuitive that the limited political involvement in Armenia's commission aims the establishment of a less centralised and more participative political system. This contradiction between the reform process and its declared intentions raises serious doubts regarding the genuine intentions of the political elite.

On the other hand, the intention to seek greater social involvement in order to re-establish citizens' trust is obvious in the case of Georgia. At this point the government was in a deep political crisis, which is proven by the complete lack of involvement of parliamentary and non-parliamentary opposition. The parties from the United Opposition group not only stopped attending the parliamentary sessions, but organized frequent street protests. Therefore, if 20 political parties were invited, 14 refused to take part in the State Constitutional Commission (SCC). In summary, if the UNM had the intention to build a unified political support by involving the opposition in the reform process, the opposition was not willing to contribute and legitimise the outcome of the amendment. On the contrary, the opposition adopted a strategy of isolation of the UNM in the parliament and through street protests.

However, this opposition boycott needs to be analysed taking into consideration the UNM parliamentary majority. Due to the mixed electoral system 61% of votes translated in 109/150 MP, which would allow the UNM to unilaterally draft and adopt the Constitutional amendment. From the oppositions' perspective such majority in the Parliament allows the UNM to impose its preferences, while their participation in the Commission would simply give a supportive image and legitimate the process. Similar dynamic is observed in other constitutional commissions and in the Parliament. This trend is considered as a manifestation of the conflictual culture in Georgia, where the right to speak out one's political position is a minimum condition. When the opposition faces an "overwhelming majority in the Parliament", or an "overwhelming government appointed SCC", it leaves these decision-making platforms (Babeck, Fish and Rechenbecher, 2012: 67). Interestingly, this strategy was followed by the establishment of a parallel Public Constitutional Commission (PCC) in order to publicly voice its preferences and concerns.

The successful efforts to isolate the UNM in the Constitutional Commission are obvious in the affiliation network in Figure 15 (including 15A and 15B). The UNM belongs to the third most represented group of organisations together with the Presidency, with connections to 12 members of the SCC. This implies that in spite of having officially only one representative of the party in SCC, 12 members have been connected to this party before or after the Constitutional reform. The other most represented institutions (in terms of members' affiliation) are the different Ministries of the executive, with special weight given to the Ministry of Justice (18 members). The Parliament and the Tbilisi State University remain the most important institutions illustrating the focus on both political and academic figures of this Constitutional Commission. However, the focus on the executive becomes much clearer when all the connections to institutions of executive are considered (including the Presidency, the Prosecution Office, and local administration). A total of 98 connection from individuals to Executive institutions are present, which significantly outnumbers the 25 connections to the Parliament. Furthermore, the Judiciary is represented by 39 connections (including links to the Constitutional Court, the HCJ and the Tbilisi Courts of Appeal).

Academia is also represented with 69 links between members of the commission and High Education Institutions, the main being the Tbilisi State University. GYLA remains a central CSO organisation in the Commission. In conclusion, the affiliation network confirms that the SCC is a reflection of the Georgian institutional and social framework at the moment when the reform process was developed. More specifically, the SCC presents high concentration of members with background in the Executive. The UNM is overrepresented as almost all other political parties decided not to take part in the SCC and avoid legitimising the process. Academics also have a relevant representation, while CSO are less notorious.

On the other hand, in parallel to the SCC, a group of opposition politicians, led by the constitutionalist Vakhtang Khmaladze established a Public Constitutional Commission (PCC) in May 2008. The two platforms did not engage in a debate. The establishment of the PCC is the logical continuation of the decision not to take part in the SCC, based on the assumption that the processes in the Parliament and the SCC are not genuine. According to the opposition the reform process aimed the perpetration of the UNM power and the future election of Saakashvili as Prime Minister in order to counter the two-mandates limitation. In order to express their lack of support to this process, the PCC “has been founded to establish a level playing field” as this “would have been the only way to be heard” (Babeck, Fish and Rechenbecher, 2012: 67). The possibility of an alternative Parliament was also discussed in the framework of the 2008 opposition boycott (Fuller, 2008).



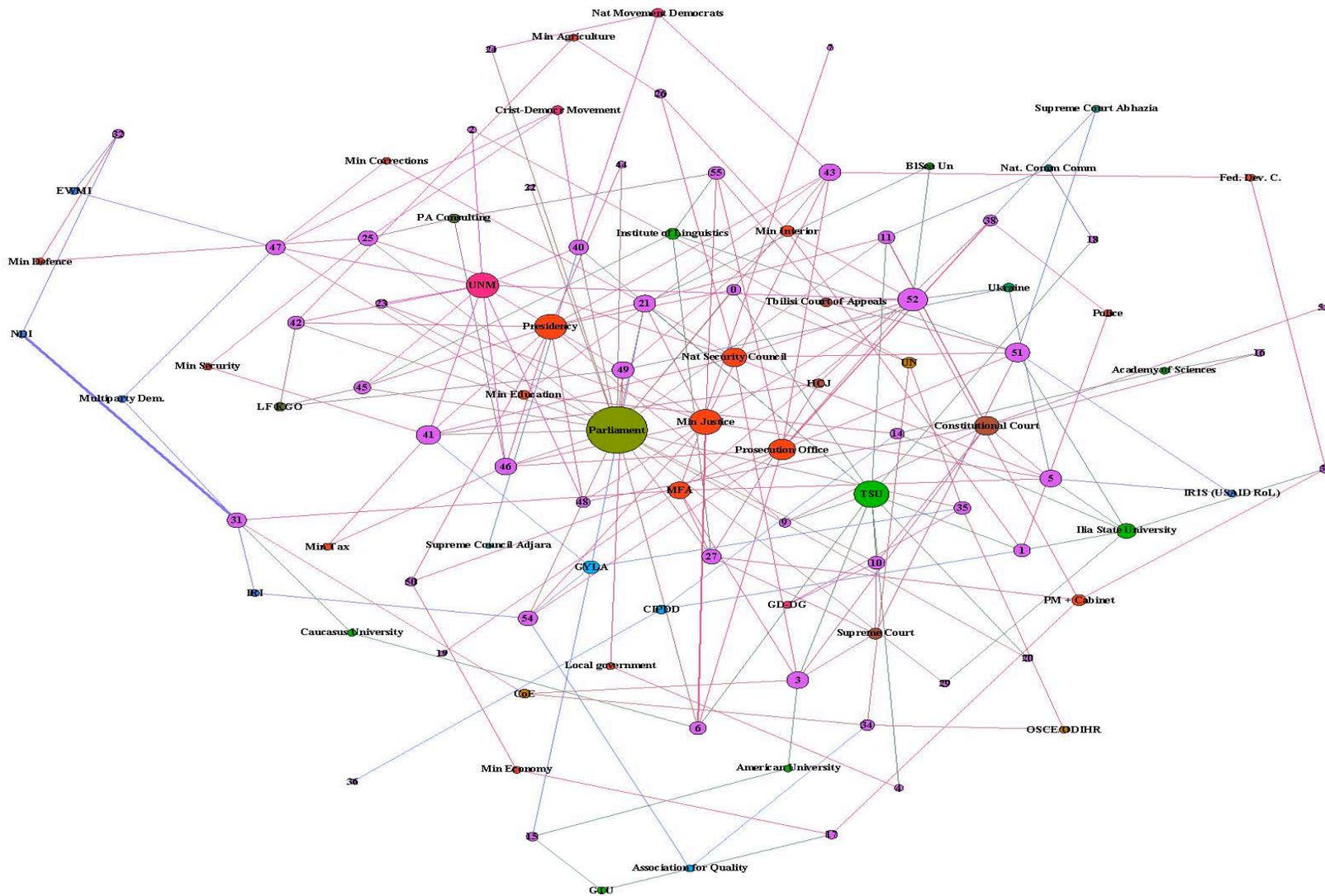


Figure 15B. Simplified affiliation network State Constitutional Commission Georgia 2009 - 2011

Such level of polarisation and lack of cooperation and consensus-building in the public sphere corresponds to the highly conflictual political culture that was reported by different actors in Georgia. Domestic actors are claimed to oppose each other in order not to legitimise the other's decisions (Interview18). External observers have identified this phenomenon as "Tamada culture", which claims the "right of one's own opinion". When faced with overwhelming opposition, "instead of actively engaging with each other and criticising each other's drafts", the "discussion is restricted to two [parallel] monologues" (Babeck, 2012: 66-67). The creation of parallel monologues therefore is an indication of the high polarisation and the low level of trust between the political elite, which leads to frequent constitutional and legal changes after power transfers. The same leaders of the PCC initiated a new Constitutional reform based on the concept of the PCC when they accessed government as part of the 2012 Georgian Dream coalition. In 2009 the PCC did not formulate any specific suggestions in terms of draft articles for their consideration by the Parliament, but provided a complete concept of new constitution based on parliamentary democracy. This approach demonstrates the lack of dialogue and the presence of two alternative political projects.

This relationship leads to the creation of alternative, incompatible and exclusive narratives of the events that take place in the political environment. From the UNM perspective the opposition has the intention to sabotage the political reforms with the aim of accessing the power, which is demonstrated by their boycott of the representative institutions. On the other hand, the opposition claims that the elections were rigged and that the overwhelming UNM majority in the Parliament and in the SCC strategically uses the constitutional reform in order to adapt the political system to their interests and to allow the governing elite to remain power (Interviews 18 and 31). Given the proportionally higher UNM representation in the SCC, it is understandable that the presence of one representative per opposition party would imply the lack of capacities to effectively influence the decisions of the SCC. The degree to which the opposition was convinced that the reform process is instrumentally used by the Saakashvili government, is illustrated by one of the amendments recommended by the Free Democrats Party. Their suggestion included a specific prohibition for the President to run for Prime Minister, after the end of his term (Babeck, Fish and Rechenbecher, 2012).

These alternative and incompatible narratives exist in parallel and serve as the basis for the differentiation between the main political parties. Their position in the system is based on the adoption of one or another narrative, which is used as a cornerstone for explaining their current and past actions in the political field. Consequently, from a constructivist perspective these narratives can be seen as arguments used instrumentally by the domestic actors in their

struggle for political support and power. Therefore, personalist political parties are sustained by their use of such argumentative resources for the mobilisation of social support.

The Figure 16 below shows the affiliation network of the PCC, which is much smaller and less dense in comparison to the SCC network. In this case the individual members, rather than institutions are the most relevant nodes. The PCC is organised on a voluntary basis without financial support and many of its member, including Vakhtang Khmaladze had to combine it with their everyday occupations (Babeck, Fish and Rechenbecher, 2012: 67). In addition, it is notorious that Universities are the most common organisation with a special focus on the Tbilisi State University, like in the case of the SCC. In comparison to the SCC, civil society organisations have a higher proportionally representation in the Public Constitutional Commission. The PCC has involved almost the same number of civil society organisation, in spite of the smaller size of the commission. For instance, the SCC has 34 links to CSO, while in the case of the PCC these links are 27.

In addition, the PCC is more balanced in comparison to the SCC in terms of representation of the executive and the judiciary. These two branches of power have 22-23 links with individual members. Many of the PCC members are well-known public figures, due to their positions in the Judiciary. At the time of the reform, two of the PCC members had previously been or were judges of the Supreme Court and two others of the Constitutional Court. If considered the period after the reform process, their affiliation has extended to three judges and one consultant to the Supreme Court, as well as three judges that were members of the Constitutional Court. Another PCC member represented Georgia on the European Court of Human Rights. Therefore, in spite of being considered as more representative of the civil society and the opposition, the Public Constitutional Commission involved important judicial figures, who expressed their disagreement with Saakashvili's administration (Babeck, Fish and Rechenbecher, 2012: 67). However, the legislative is less represented in the PCC, as it is linked to just five individuals. This circumstance is normal given the limited representation of the opposition in the Parliament. Furthermore, political parties are much less represented in this commission, where more members of the Republican party are involved.

These observations show that the PCC is not so much linked to political and party dynamics as the SCC, but rather focuses on members with academic and civic background. This is also shown by the high number and the variety of institutions to which the PCC members are linked. The majority of them have belonged to diverse entities including different civil society organisations or media outlet that together represent more than one fourth of all the organisation represented in the below network. This also shows that the career path of the



members of the Public Constitutional Commission are different to the representatives of the executive that were much more represented in the SCC. While executive officials have a bureaucratic or political background, their trajectory is much more stable and includes a smaller number of organisations to which they are affiliated. While the PCC members generally have belonged to a higher number of organisations. This career path is more common for the civil society sector, rather than politically linked career trajectory.

#### ***V. INTERNATIONAL FACTORS***

The position in the international context is a key defining features of Georgia as a case-study. Currently Georgia's pro-EU stance is outstanding in the whole region. Since 2012 the lowest support of the Georgia's EU orientation has been 61% in 2015 and the highest was 83% in 2018. For the most of the period between 2012 – 2019 the citizens' approval of EU membership perspective has been above 70% (Thornton and Turmanidze, 2016, 2019). This unequivocal support is the outcome of the most recent historical juncture in Georgia - the 2008 Russian intervention in South Ossetia and the support of the independence of Abkhazia. As described above the Constitutional reform analysed here started just one month after Russia's intervention. The military imposition was accompanied by the use of Russia's leverage on Georgia, as increased the energy prices, trade sanctions and reformed its migration policies. In addition, a large number of internally displaced people required the adoption of the corresponding measures by the state administration in Georgia. In this way Russia contributed for the internal destabilisation of Georgia, which undoubtedly conditioned the political choices of Saakashvili's government (Tudoroiu, 2012).

This negative leverage, however, had the opposite effect on Georgia geo-political orientation. The blockades reinforced Georgia's efforts for diversification towards alternative markets (Demytrie, 2015; Bumbu, 2016). In addition, Georgia's choice of EU membership and democratisation were used as key features for the process of identity definition of the country. In 2009 more than ever this identity was sustained by UNM leaders also in opposition to Russia, which is seen as an occupier, invader and a threat to its national identity and territorial integrity.

Against this background the EU involvement in Georgia and in the Eastern Neighbourhood was significantly developed in the immediate aftermath of the South Ossetia conflict. In 2009 the Eastern Partnership (EaP) initiative was adopted in order to "advance the cause of democracy, strengthen stability and prosperity" (Council of the European Union 2009b: 11; Shapovalova 2009). In the bilateral dimension it introduced the possibility to negotiate Association Agreements (AA) and Deep and Comprehensive Free Trade Areas

(DCFTA). This new contractual framework is intended to meet the aspirations and to increase the incentives for “economic integration in the EU internal market”, as a consequence of a “structured approximation process [...] with EU standards and norms” (Elsuwege & Petrov 2014: 5). In addition, the AA develops the value-based conditionality of the EU. The ‘common values’ stated in art. 2 of the AA (in terms similar to the Art.2 TEU) are upgraded to the “level of binding principles underlying the entirety of the” AA and are defined as its ‘essential elements’ (Elsuwege & Petrov 2014: 61). Adherence to these common values is a condition for the implementation of the agreement, which assumes the possibility of its suspension in the case of their violation (European Union & Republic of Moldova 2014: Art. 422; European Union & Republic of Georgia 2014: Art. 455). In support of this strengthened conditionality, a multilateral thematic platform on Democracy, good governance and stability was established, in order to “facilitate the development of common positions and joint activities” (Commission of the European Communities 2008a: 8 ). These platforms recur to socialization through regular meeting between the EC and EaP officials (Elsuwege and Petrov, 2014).

The “EU’s democracy-building activities have generally privileged institution-building” (International Institute for Democracy and Electoral Assistance, 2016). This trend is confirmed by the budget distribution of the ENP support. For the period 2007-2011, 70% of aid “was granted in the form of sector budget support” (Shapovalova & Youngs 2012: 3). In addition, between 1995 and 2015 the main target fields of the EU democracy support are socio-economic development and state-administrative capacity, while “the most under-addressed components are ‘effective power to govern’ and ‘horizontal accountability’” (Wetzel & Orbie 2015: 238). In the case of Georgia, the same research concludes that the EU “focuses on a number of domestic shortcomings (for example electoral regime, social-economic development), and to a lower extent on others (for example political rights, horizontal accountability)” (Wetzel & Orbie 2015: 146), in spite of horizontal accountability and compliance with political rights being negatively assessed by the Bertelsmann Stiftung Transformation Index (Wetzel & Orbie 2015: 146).

In the 2010 Constitutional reform international actors, as the Venice Commission and the German Development Agency GIZ played a very important role. As a consequence of the limited domestic participation of the opposition in the process, “international advisors became more of a collective sounding board” and “the critical eye of the reform” (Babeck, Fish and Rechenbecher, 2012: 96). However, such replacement of domestic opposition by international experts is not equal as they are “primarily reaction and not shaping the constitutional process”

(Babeck, Fish and Rechenbecher, 2012: 96). Furthermore, this aspect requires further consideration, given that both cases, Armenia and Georgia, are defined by the complete lack of involvement of the opposition in the constitutional reforms process. Against this background, the approval and in certain cases even the support of international actors as the GIZ and the Venice Commission might be used to legitimise the decisions adopted by the incumbent without the involvement of the opposition.

The GIZ had adopted the position of advisor to Georgia in its legal and political reforms since the 1990s. The GIZ has been implementing during most of Georgia's transition the Programme "Advice on Legal and Judicial Reform in the South Caucasus". As seen above this programme also includes Armenia in its support to the development of the constitutional and legal system. In the framework of this project the GIZ provides expert opinion, training and support to the Georgian legislators and state agencies. Importantly, the final draft of the Constitutional text was produced during the workshop organised in Berlin, which managed to gather both representatives of the State Constitutional Commission and the Public Constitutional Commission. In this sense it is important that the GIZ experts repeatedly insisted on the need to improve the communication and the trust between the different actors involved in the Constitutional-making process. However, these efforts were not successful. As the GIZ expert, Georgian policy-makers did not implement the recommendations for giving the Parliament significant capacity to render the government accountable.

The Venice Commission was the other body which accompanied closely the process of Constitutional reform. However, like the GIZ it was not very successful in gaining the support of the government in its recommendations. The Venice Commission recommended a reinforcement of the "powers of the parliament", focusing "on the formation of the government and especially those on the motion of no-confidence, as well as those about the parliament's powers in budget matters" (Venice Commission, 2010" 16). The parliament passed the amendments the 15 October 2010, the same day, when the Venice Commission adopted its opinion, which further illustrates the criticism against an increased accountability towards international actors than to domestic opposition or CSO.

Against this background, the EU noted in its 2010 progress report that the "process and pace" of the reform were criticized, as "it was adopted by the parliament on the same day that the final opinion of the [...] Venice Commission was published" (European Commission, 2011: 4). In addition, the EU also reflected that the "amendments does not guarantee parliament's oversight function as they make it very difficult for the parliament to mount a vote of no

confidence in the government” (European Commission, 2011: 5). In spite of this negative feedback on the constitutional reform, the process of negotiation of the AA and DCFTA, initiated in 2009 in the framework of the recently established Eastern Partnership, continued. Negotiations for signing the AA were launched in July 2010, three months before the adoption of the Constitutional reform in October 2010. Therefore, no specific conditionality was applied in this case regarding the inter-constitutional accountability (European Commission, 2011: 5).

Georgia’s financial support received after 2009 was adapted to the requirements of the new type of engagement in the Eastern Partnership. Importantly, the funding provided for Georgia was increased from 120.4 million Euros for the period 2007-2010 to 180.3 million Euros for the period between 2011 and 2013 (European Commission, 2010). In addition, before the EaP was created, the EU-Georgia relations focused on Support for Democratic Development, Rule of Law and Governance as one of its three priority areas. After 2011 a Comprehensive Institution-Building Framework was established, and it covered the area of democratic development, good governance and human rights. Specifically, institutional strengthening was provided to the oversight institutions, as the Public Defender, the Chamber of Control and the Parliament of Georgia. The goals of these actions were “to reform the aforementioned institutions, building their administrative capacities” (European Commission, 2011a: 5). This evolution shows that the focus on inter-constitutional accountability and its support by the EU became more specific and supported by additional funding. However, it also illustrates that the negative feedback and domestic criticism against the process and outcome of the reform did not lead to negative conditionality by the European Union.

Besides, the EU also reacted to the military and geopolitical threat of the 2008 conflict. It provided a substantial financial post-conflict support of up to 500 million Euros from the EU budget for the period 2008 – 2010. This support focused on managing the consequences of the conflict, as the internally displaced persons and confidence-building measures. In addition, an EU Special Representative for the South Caucasus and EU Special Representative for the crisis in Georgia were nominated and were both active in this field. In addition, the EU adopted a very active role, as a co-chair together with the UN and OSCE, in the Geneva talks, which remained the only platform for conflict resolution between the parties involved in the conflict. In addition, an EU Monitoring Mission was established for monitoring the stabilisation of the conflict. However, it was rejected access to the region, which led to “asymmetrical implementation of the mission’s mandate” (European Commission, 2010: 8). Consequently, it is possible to conclude that against the military intervention of Russia, the EU mobilised

significant financial support, diplomatic efforts and a civilian monitoring mission, which however, did not effectively counteract the imposition by Russia.

These limitations also translated in the process of “borderisation” and creeping occupation, which consists in the expansion of the territory under occupation by South Ossetia and Abkhazia, supported by Russian troops. This process has been constantly developing since 2009, integrating complete villages and key infrastructure (as gas pipeline) in the occupied territory. Therefore, Russia provides security guarantees (direct military intervention), discursive legitimisation of the creation of secessionist enclaves, as well as economic support (through trade and economic incentives provided to South Ossetia and Abkhazia). In addition, this frozen conflict de facto established “pockets of autocracy”, which reduce the capacities to govern and real possibilities for EU-integration of the countries in the neighbourhood (Obydenkova & Libman 2015: 110).<sup>20</sup> Furthermore, this situation reduces the credibility and social trust in the government and in Western international organisations as the EU and NATO, that seems incapable of controlling the territory. Furthermore, this process would hypothetically be a key obstacle for integration in NATO or the EU (Kakachia et al., 2017).

## ***VI. CONCLUSIONS AND EFFECTS ON FREEDOM AND EQUALITY***

The Constitutional reform process in Georgia presents clear differences from the case of Armenia, in terms of regional inter-dependencies, as well as of political participation and competition, and to a certain extent in political system. Georgia has clearly aligned with the EU and has committed to democracy-oriented reforms. In spite of the deviation of Saakashvili’s government from the good democratic record, due to power centralization, the first peaceful transfer of power in independent Georgia took place as a result of his electoral loss in 2013. This shows that Saakashvili was committed to the main democratic procedure – the elections, and was not willing to engage in openly authoritarian practices. The clear pro-Western, and specifically pro-NATO position of the UNM led to the most important conflict between South Ossetia and Georgia, with the direct intervention of Russia. This conflict and the end of diplomatic relations between the two countries were the international background during the reform process in the period 2008 – 2010.

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<sup>20</sup> “A ‘pocket of autocracy’ is a geographically defined entity within a sovereign, internationally recognized, democratic or a semi-democratic state, which though the use of authoritarian means to uphold de facto independence for a significant period of time” (Obydenkova & Libman, 2015: 110).

In spite of the broad pro-democratic orientation of the UNM government, the use of state resources and institutional persecutions against potential competitors was an informal tool used by the government, which illustrates how it took advantage of its power positions and administrative resources for perpetuating its domination. The evolution of the reform process and of its outcome clearly show what was the goal at each stage of the government. Partially the initial intention of the government was to include the opposition in what would be seen as a legitimate reform process. After the initial stages, when it became clear that the domestic actors would take part in the reform, the external legitimacy provided by the approval of international actors as the Venice Commission and the GIZ was pursued.

The key difference in terms of domestic competition and participation, as well as of institutional framework between the two Caucasus countries studied refers to the lack of such strong power concentration in Georgia, in contrast to Armenia. In the case of Georgia the decisive campaign of the opposition against the legitimization of the UNM government and the constitutional reform was essential. The success of this campaign was due to great extent to the loose party discipline of the UNM, which made possible party defection of key figures from it and contributed for both weakening the UNM, delegitimizing its openly authoritarian methods and strengthening of the opposition. The strict discipline in the Republican Party of Armenia and its aligned coalition partners did not allow such a development in Georgia's neighbour, leaving the RPA government dominant for twenty years. The opposition in Georgia has greater mobilisation capacities and is able to effectively call against state abuses, due to the effective social support it receives. When the opposition was not able to influence the decisions taken by the legislative and the executive, they showed the required capacities to build a broad social coalition (including media, CSO, academia and opposition parties) and pressure the government through social mobilisations to seek compromise.

The limited success of mass mobilisation in Armenia is also due to the greater willingness and capacity of the first RPA President to engage in open oppression of street protests. Therefore, if Saakashvili established the state of emergency a year earlier than Kocharyan in Armenia, the involvement of the military, the killing of civilians as a result of open clashes and the arrests of protesters in Armenia showed greater willingness and capacity to act against any sign of domestic rebellion. In spite of this powerful image in Armenia, Sargsyan was not able to keep under control the Velvet Revolution, due to its greater capacity to mobilise social protests, due to the delegitimization of Sargsyan's government.

Therefore, a key moment in Armenian 2018 protest were the support expressed by representatives of the military to the protests. This step showed the level of delegitimization reached by the RPA government, even among the military which sent a clear sign of regime weakening to both domestic and international actors. The threat of internal destabilisation which can be used by Azerbaijan has successfully contributed to social and political power centralisation in Armenia. This capacity to produce power centralisation has never been so strong in the case of Georgia. Saakashvili's claims for unity at the face of the foreign threat failed even a month after Russia's intervention. Therefore, Saakashvili's capacities of appeal for social support with the call for national unity and the threat through protest repression were not strong enough to counter the broad opposition against the measures he adopted.

Furthermore, the domestic opposition in Georgia also showed important capacity and persistence in its mobilisations. The ongoing protests and institutional boycott of the opposition in Georgia shows that, in spite of the fragmentation between opposition groups, it has the capacity to transcend its internal differences in order to remove from power a common opponent. Such a sustained common position over time was very difficult for Armenian opposition, as some parties opted to enter in coalition with RPA in order to avoid political isolation. The media environment is another relevant factor which contributed for a more successful opposition mobilisation in Georgia in comparison to Armenia (before 2018). For instance, in spite of the efforts of the UNM government to limit the opposition TV channel in 2007, such alternative sources of information existed during most part of Saakashvili's government. In the meantime, freedom of expression was more limited in Armenia and social movements developed to great extent due to the diversity of sources provided by digital media.

The affiliation networks in Figures 2 and 3 show some different trends of competition and participation in Georgia's reform from the one in Armenia. As the Constitutional Commission in Armenia was much smaller, the large number of actors involved in the State Constitutional Commission in Georgia sought greater legitimacy and participation. This level is due to the different approach and position of the governing party in the two countries. While the Republican Party in Armenia had a consolidated power position it established a closed reform process of the Constitution. On the other hand, Georgia's government was delegitimised and faced increasing domestic opposition. Therefore, it sought greater legitimacy through a more open and inclusive process.

However, both in Armenia and in Georgia, the Constitutional commissions were dominated by the executive and the governing party, as they were over-represented. Therefore,

the composition of the Constitutional composition provided them to have a dominant position and control of the drafting stage of the reform process. It also established a dominant executive UNM-party culture in the Constitutional Commission. In Georgia, however, this led to the boycott of the commission by the opposition and to the creation of a parallel Public Constitutional Commission where civil society and opposition actors were represented to a greater extent. This parallel process is representative of the better level of development and consolidation of the opposition in Georgia, unlike Armenia.

These dynamics illustrated by the affiliation network analysis shows the way in which the governing elite instrumentalised these decision-making processes. It is also a significant manifestation of the dominant trends of participation and competition in the highly centralised political regimes as Armenia and Georgia. In both cases, however, the reform processes show significant level of inequality of the domestic actors in their capacity to influence the reform processes. The use of administrative resources, the limitation of political rights and the use of formal reform processes for influencing the institutional framework and functioning in benefit of one political formation is significant abuse of the principle of political equality. Therefore, the affiliation networks used here show how the privileged position of the governing party allows it to be dominant in the drafting stage of the reform process.

This trend of participation and competition was likewise reflected in the outcome in both reforms. In Georgia, as in Armenia, the reforms to more parliamentary form of government were very positively assessed a step in the right direction, given the high level of centralisation of the political system. However, as the analysis of Georgia's Constitutional reform showed the inter-constitutional balance was still not guaranteed, leading to institutional conflicts and toothless accountability. Specifically, the mechanisms for control and accountability given Parliament and the opposition were to great extent rendered insignificant and power-less, due to the long period, complicated procedure and need for additional parliamentary support as added requirements. Therefore, the opposition did not have the chance to exert significant control on the incumbent and the Parliament on the government, allowing the dominant position of the governing party to continue unaccountable. As a consequence of the inequalities produced by this institutional system, the polarisation and opposition between the political factions increases leading to increased unconventional participation. In addition, the politicisation of the Constitutional Court (in both countries) is another indication of the instrumental use of the institutional framework for the party interests, which is also perceived as a factor for unequal competition and representativeness of the political system.

Therefore, it is important that the opposition reached its goals not due to its work in the framework of Georgian political institutions, but mainly outside them. In spite of the fact that the elections in 2012 led to peaceful transfer of power, the parliamentary opposition spent almost the complete second UNM government in boycott of the formal institutional decision-making, without engaging in any discussions. This trend is the outcome both of Georgia's conflict political culture, but also of the institutional framework and most significantly of the electoral rules that allowed the UNM to reach Constitutional majority in the Parliament and approve two constitutional amendments in spite of the reduced electoral support. This aspect is discussed in Chapter XI. The perception of the need to recur to unconventional participation as the only viable mechanism to influence the decision-making process is an aspect observed both in Armenia and Georgia. Therefore, in the two cases unconventional political competition and participation still plays important role in policy-making, due to the power concentration in dominant elite that controls the institutional framework. This trend both in the case of Armenia and Georgia is an indication of lack of equal access and freedom in the exercise of political rights. Even though the case of Georgia is not so drastic as the Armenian experience, the lack of equality and freedom leads to legitimisation of unconventional participation as a way to overturn the formal and exclusive institutional decision-making process.

Against this background of social protests and delegitimization of the institutional decision-making processes, the role of international actors that support the democracy-building reforms acquires new significance. The lack of involvement of a critical opposition or social actors in the Constitutional reform process, leaves international experts as sole critical eye of the processes. However, there are substantial differences between domestic and external actors in terms of initiative and consensus-building dynamics of the process. Therefore, external experts are more reactive, and their approval of the process should have only indirect expert role for the legitimacy. However, when domestic actors are not represented in the reform process, international experts should consider to what degree they contribute for the domestic legitimation of the process. Therefore, if citizens' rights and freedoms are violated as was the case of Armenia, the formal approval of the process will contribute for their loss of legitimacy in the country, having potentially negative effects of democratic legitimacy in general. This is a relevant aspect to consider, given that the EU subscribes to Venice Commission opinions.

However, in the case of Georgia, the Venice Commission clearly expressed the weaknesses of the institutional reform, which allowed it to play a more balanced role. The Venice Commission indicated that the reform process was a step in the right direction, given

that the power concentration of Saakashvili's first government was diluted to certain extent. However, the weaknesses it indicated were essential for understating the level of equality and freedom provided to the citizens and for the strategies adopted by domestic actors. The aspects that were criticised on repeated occasions by international actors were the lengthy and complicated procedure of the no-confidence vote, the possibility to open investigative commissions and the limited role of the parliament in the budget approval. An additional hurdles in these aspects was the strong executive, the majority with veto power, which led to weak accountability procedure of the executive to the legislative.

Furthermore, as in the analysis of the Rule of Law in Georgia (Chapter V), the government (in this case UNM and in the Rule of Law case GD-DG government) purposefully rejected the adoption of key aspects that would contribute significantly for greater equality in citizens' access to the decision-making process. This trend differs from the dynamic developed between Armenian Constitutional Commission and the Venice Commission, where all the recommendations were adopted, but the weak and fragmented opposition did not have access to any of the accountability procedures included in the constitution (as they were only 8MP). In addition, it is important that most of the conflicts between the President and the Parliament after the adoption of the constitution referred to procedures of nominations of Supreme Court Judges or the control of the National Security Commission. This trend confirms the observation of Chapter V that the main asset for the preferential fit of political elite in Georgia is the control of key institutional positions, achieved by nomination or by creation of a parallel institution.

The external threat in Georgia led to the social and political consensus regarding the EU geo-political orientation, which is the second factor that differs in Armenia. In spite of the presence of existential threat in both countries, Russia in the case of Armenia has adopted the role of security guarantor, while in Georgia it is the main threat to its identity and territorial integrity. This different role predefines the different choice in geopolitical orientation of the two countries. Therefore, in the case of Armenia the positive conditionality of Russia leads to social and political consensus regarding the military, geopolitical and economic alignment with Russia. On the other hand, the negative conditionality and existential threat by Russia has produced the opposite result in Georgia, leading to greater efforts for diversification towards alternative sources of security, economic growth and socio-political development. Importantly, the EU provided additional incentives as upgraded contractual framework (AA/DCFTA) and increased in the framework of the EaP, created one year after the South Ossetia conflict. The EU initiatives in conflict-resolution were not fully implemented, due to Russia's imposition.

Independent variable	Contextual propositions 2004 - 2008	Causal propositions 2009 - 2010	Outcome
<p>Secessionist conflicts State existence threatened by Russian military presence;</p> <p>Weaker state administration originally</p>	<p><b>Centralized personalist presidential system</b> with blurring boundaries between the state and the UNM, which controlled the Parliament, and the LA.</p> <p>Lack of check and balances, with dominant executive.</p> <p>Limitation on freedom of expression and assembly</p>	<p>Constitutional reform, introduced as an <b>effort of unification when facing the foreign and domestic crises.</b></p>	<p>System defined as <b>mixed, “super-rationalised and prime-minister-presidential subtype and new amendment initiated</b></p> <p>Complex procedure for no-confidence vote - PM protection.</p> <p>Limited role of the Parliament in budget approval.</p> <p>Minority right improved, but not implemented.</p> <p>Political pressure on Constitutional Court</p> <p>Conflict between the President and the government.</p>
<p>Medium ethnic diversity</p> <p>Political culture based on conflict</p>	<p><b>Political competition</b></p> <p>Zero-sum relations and high polarisation</p> <p>Use of state resources against opposition.</p> <p>Incumbent governs during two mandates</p> <p>Weak party discipline. Many UNM defectors in 2006</p> <p>Fragmented, but relevant opposition with permanent protests and parliamentary boycott (after 2007)</p>	<p>SCC dominated by executive and the UNM.</p> <p>Opposition boycott.</p> <p>PCC is the alternative platform for discussion of the constitutional reform.</p> <p>Permanent protests organized by parliamentary and non-parliamentary opposition</p>	<p>Georgian Dream gathers all the opposition factions</p> <p>2012-2013 Cohabitation UNM – Georgian Dream, frequent conflicts, but first peaceful transfer.</p>
<p>Former successful Rose Revolution</p>	<p><b>Limited social participation in politically (UNM) controlled institutions, but broad invitation for participation in the SCC</b></p> <p>Dominance of the UNM goals over the rights of the citizens, who could not influence the policy-making</p> <p><b>Opposition demands Constitutional and deep institutional reforms</b></p>	<p>Boycott of the SCC and limited inclusiveness and representativity of the SCC.</p> <p>Limited civil society involvement in SCC.</p> <p>Better civil society representation in the PCC.</p> <p>Recurrent street protests.</p>	<p>Broad social support of the change of government.</p>
<p>Pro-EU and pro-Western identity reaffirmed in 2004</p>	<p><b>Openly declared Pro-NATO and EU orientation</b></p>	<p>The <b>Venice Commission</b> criticized key aspects as the no-confidence vote; investigative commissions and the local authorities.</p> <p>“<b>International advisors (GIZ, VC)</b> became the critical eye of the reform” and replaced the domestic opposition–legitimacy</p>	<p>Not inclusion of key recommendations of the Venice Commission, but still this reform is a step in the right direction</p> <p>Pro-EU identity and foreign policy choice. AA/DCFTA negotiations and concluded in 2014 and VLAP in 2012</p>
<p>Economic dependence on Russia until 2006</p>	<p>2008 Military intervention Russia in South Ossetia ; 2006 – increased energy prices, trade sanctions and migrant controls.</p>	<p>Russia seen as a threat to state and identity existence.</p> <p>Borderisation and “creeping occupation” persists.</p>	<p>Russia opens its market for certain Georgian products after power transfer to the Georgian Dream in 2012.</p>

Table 7. Causal mechanisms in interinstitutional accountability Georgia 2008 - 2012

## ***IX CHAPTER. MOLDOVA***

### ***I. CONSTITUTIONAL REFORM PROCESS IN MOLDOVA 1999 – 2000***

The reform studied in the field of Inter-constitutional accountability in Moldova is the change from a semi-presidential to parliamentary system that took place in 1999 – 2000. In 2016 the Constitutional Court partially abolished this reform and returned to direct presidential election. The first part of the reform had mainly domestic goals and impacts, while the 2016 development also implied geopolitical transformations. The interaction between domestic and foreign actors in this reform will be analysed below, focusing on the first stage of the reform (1999-2000) and then exploring the developments in 2016.

The second President of Moldova, Petru Lucinschi (1997 – 2001), used the first years of his mandate to consolidate parliamentary support around his figure. However, the pro-presidential Bloc of Democratic and Prosperous Moldova (BDPM) was weakened and the Alliance for Democracy and Reform (ADR) reached a majoritarian support (61 out of 101 MP) after the 1998 parliamentary elections. Lucinschi's lack of parliamentary support forced him to negotiate and compromise with the Communist Party of Moldova for the approval of his initiatives. Therefore, the alliances that he established with competing and unstable political formations, affected negatively his image and increased the criticism against him. In order to reverse this dynamic, in 1999 Lucinschi called a non-binding referendum on a reform to a fully presidential regime. More than 50% of voters supported the presidential system, but the turnout was lower than the required minimum for it to be binding (Roper, 2008).

Consequently, in 1999 and 2000 a political struggle for power unfolded between the President and the Parliament. The 01 July 1999 the President established a Commission for the Constitutional reform. After three revisions of by the Council of Europe between September and October 1999, the Commission presented a final draft to the Venice Commission. This Constitutional draft aimed to establish a more assertive presidential system than any of the previous texts. In addition, he suggested reducing the Parliament to 70 MP and the adoption of mixed electoral system (Roper, 2008). According to the Constitutional commission the transformation of the semi-presidential system in a presidential one “is imperative following the consultative referendum” (Venice Commission, 1999: 1). In addition, the President claimed that “Moldova's political instability required the concentration of power in the presidency, [...which...] would to assume responsibility for the country's economic reforms, rather than a diverse group of parliamentarians and government officials” (Roper, 2008: 120).

The conclusion of the Venice Commission regarding this first draft was that it is “a mix of the different presidential and semi-presidential systems” [which...] is likely to bring [...] conflict and offend against the principle of separation of powers” (Venice Commission, 1999: 1). The suggested change in the political system was also defined as “a remarkably strong presidential system, due to the differences it displays in comparison to a traditional presidential system” (Venice Commission, 1999: 2). It significantly limited the legislative power of the Parliament and its capacity to influence the government nomination, the foreign policy and international treaties (Venice Commission, 1999).

In parallel, as a reaction to this initiative of the President, the Parliament prepared two alternative drafts for constitutional amendment. The first draft, which was presented by 39 MP in May 1999, sought to strengthen the government, while isolating the President from the exercise of power and decision-making. The main changes suggested were the increased powers of the government to “establish the priority for the parliamentary discussion”, to “engage its own responsibility before parliament”, to “legislate through ordinances” and to approve the adoption of legislation, when it implies “the increase of the budget” (Venice Commission, 1999: 3). This draft was considered compliant with democratic standards by the Venice Commission (Venice Commission, 1999).

Subsequently, in August 1999 a third alternative constitutional draft was prepared by 38 MP. It introduced the idea of a fully parliamentary, in which the President is elected by the majority of deputies in the Parliament. This proposal established that the President should be at least 35 years old and have lived in the country for the last 10 years. In November 1999 the Constitutional Court delivered a positive opinion on this initiative before it was registered for its consideration in the Parliament. It is important that until mid-2000 such positive opinions were issued for the two Constitutional Drafts presented by the Parliament and they were consequently moved to the Parliamentary phase. The Presidential Draft, however, was still retained in the Constitutional Court as late as mid-2000 (Venice Commission, 2000).

In conclusion, in 1999 a Constitutional crisis developed based on the conflict for power between the Parliament and the President. Domestic actors also confirm that “this was not a reform for something, but against someone”, specifically against the president and his reform initiative for a more centralised presidential system (Interview 68). This dynamic is confirmed by contradictions in the behaviour of the domestic actors, who instead of following a principled stance, changed their preferences on the political regime according to their power positions. Therefore, their interactions were guided by the preferential fit of the reforms regarding their power positions in the different political systems. For instance, in 1994 Lucinschi had

advocated for a parliamentary regime, in which the President is elected by the Parliament (Roper, 2008), while in 1999 he initiated “a remarkably strong presidential system” (Venice Commission, 1999). This change proves that for him the reform in inter-constitutional accountability was an interest-based, rather than a norm-based decision. The presidential system adapted better to Lucinschi’s preferential fit at this specific moment and in order to promote its adoption, he used normative arguments. In order to support the adoption of the presidential model, he claimed that the concentration of power in the President allows an easier adoption of the much-needed economic reforms.

On the other hand, the parliamentary majority adopted the same strategy in strengthening the institutional position of the Parliament. It decisively organised a counterproposal of a parliamentary system in order to weaken the President’s role. The Speaker of the Assembly, Dumitru Diakov, was one of the leaders of this initiative. On his side, he has accepted that he “was not particularly supportive of a parliamentary system”, but “Lucinschi was “totally unreliable” and “strengthening the parliamentary power was the only way to defeat him” (Way, 2015: 111). This statement confirms the central role played by personalist aspects and cost-benefit calculation, rather than the normative preferences being the main defining factors of the actors’ behaviour. In conclusion, these developments show how normative arguments are strategically used by domestic actors in their struggle for power.

In December 1999 the Council of Europe and more specifically its Parliamentary Assembly intervened in support of a compromise on the constitutional conflict, which led to the establishment of a committee with representatives of both sides. Following the demand of Moldova, it was chaired by Mr. G. Malinverni, a member of the Venice Commission. This Joint Committee had three meetings between March and May 2000, leading to the adoption of a commonly agreed text. However, it could not agree on two aspects. Firstly, the Parliament would not accept the right of the President to dismiss the Prime Minister. Secondly, according to the parliamentary representatives the electoral system should be reformed at a later stage (Venice Commission, 2000).

The draft of the Joint Committee was approved by the Presidential, the Parliamentarian representatives and the Venice Commission. In spite of this work and the moratorium during the work of the Joint Committee, the President presented another Constitutional Draft to the Venice Commission (Venice Commission, 2000). As a reaction, the 22 June 2000 the Parliament formed a Special Committee for the assessment of three draft Constitutional amendments – the one presented by 39 MP (for strengthening the government), the one presented by 38 MP (for strengthening the parliament) and another amendment on the

Prosecutor' Office (Constitutional Court Republic of Moldova, 2016). Given that the Special Committee was authorised to make changes, it decided to merge the three texts. A new constitutional amendment was voted at the first reading in the Parliament the 05 July 2005. The Parliament overcame the President's veto on this amendment. The new Constitutional text was adopted the 21 July 2000 "with minor amendments" by an "overwhelming majority", as reported by the Venice Commission (Venice Commission, 2000: 12).

The Constitutional amendment was adopted only one year after the process of reform was initiated. This is a much shorter period in comparison to Armenia and Georgia, which both were presidential systems at the time when the reform took place. This process also clearly illustrates that the domestic political debate does not develop on a normative level, but is an expression of the strategic struggle for power, which focuses on personalist or party control of key positions in the institutional system. It also leads to the adaptation of the state institutions to the conjunctural needs and preferences of the individuals in charge of the representative institution. As in Georgia, the main political asset is the control of key institutional positions.

However, the effectiveness of these institutions is subject to the trends of domestic competition and is subordinate to the goals of the most powerful elite group. This can be easily illustrated by the performance and the lack of capacity of the President to achieve his goals. In spite of the semi-presidential features of the system, the Parliament successfully challenged his initiatives, to the degree that in 1999 he had to nominate four candidates for Prime Ministerial before receiving the Parliament' confirmation. Consequently, Lucinschi started to count on the support of the Communist Party of Moldova (PCM). In spite of this coordination between them, the PCM supported the Parliamentary draft for Constitutional amendment, due to the "lack of policy coordination (especially in the area of privatisation) between the president and the parliament" and that "dividing power made both institutions weak" (Roper, 2008: 121). As a consequence, the Constitutional draft for parliamentary republic was adopted by an overwhelming majority in the Assembly (92/101 MP) (Way, 2015).

The 2000 Constitutional amendment introduced the possibility of Presidential impeachment by a qualified majority in the Parliament, rather than by a referendum as before. In addition, he has mainly "ceremonial and some residual powers, especially in Foreign relations", as in the negotiation of international treaties (Venice Commission, 2000: 13). The President does not take part in the government's meetings and cannot anymore consult the government. This impossibility for consultations of the government was criticised by the Venice Commission. In addition, the President lost the right to initiate a Constitutional amendment, but he retained the right of legislative initiative, which was introduced before the

second reading in the Parliament. According to the text discussed at the first reading, 5 July 2000, the President was deprived of this power (Venice Commission, 2000). He can also call referendums. The President retains limited capacity to dissolve the Parliament - after a deadlock for more than 3 months in the approval of legislation or the nomination of the cabinet.

The government on the other hand gained more power, as the capacity to establish the order of priority for the consideration of the laws. The no confidence vote can still be initiated by one quarter of MP. In addition, legislative delegation upon governmental proposal and the possibility for the government to engage in responsibility linked to a draft law was also included in the amended Constitution. However, the Venice Commission noted that in the draft prepared by the Joint Committee this procedure was much more detailed, in a way that provided additional guarantees against the misuse of this procedure and the Parliament would have more opportunities to intervene. Therefore, the Venice Commission suggested the revision of this legislative delegation according to the previous version of the draft (Venice Commission, 2000). The government approval was also required for any laws with budgetary consequences. And lastly, the government, instead of the President, is the institution in charge of nomination of two Constitutional Judges. This change, according to the Venice Commission “risks compromising the principle of judicial independence” (Venice Commission, 2000: 14).

Throughout Moldova’s transition the Constitutional Court independence has been questioned on several occasions. Important that the Constitutional Court in Moldova is the body in charge of verifying the constitutionality of legal acts, it confirms referenda and elections results and authorizes initiation of constitutional amendments. Therefore, similarly to the cases in Armenia and Georgia, the Constitutional Court in Moldova decides regarding factual circumstances. Two members of the Constitutional Court are selected by the Parliament, two by the government and two by the High Council of Justice. This selection procedure was criticised by the Venice Commission, because it “risks compromising the principle of judicial independence” (Venice Commission, 2000: 8). Therefore, the important role of the Constitutional Court in the legal and political developments in Moldova, as well as the selection procedure of its members allow it to be used as an instrument in the political struggle between domestic actors. This aspect has been further developed during the transition.

The suggestions of the Joint Committee Draft that were not included in the constitutional text referred to the nomination of the government, the constructive vote of no confidence and the regulation of referendums, while aspects as the delegation of legislative powers were more precise (Venice Commission, 2000). The Venice Commission concluded

that “the balance of powers is preserved and the aim of strengthening the Government [...] is achieved” (Venice Commission, 2000: 15). However, the experts’ opinion emphasized the importance of constitutional stability, noting that “the Constitution [cannot be] amended in conjunction with every change in the political situation in the country or after a constitution of a new parliamentary majority” (Venice Commission, 2000: 15). Lastly, the 2000 Constitutional change also replaced the direct election of the President with his/her election by three fifths of all members of the Parliament (Way 2015; Hale 2015). This procedure and the difficulties to reach a consensus in the Parliament, led to political crises in 2001, 2009 and 2010.

In conclusion, the 2000 constitutional amendment was an expression of the personalist conflict between the President and parliamentary majority. Therefore, the reform was instrumentally used by the representatives of both institutions to improve their power positions. For this purpose, several constitutional committees and drafts were established, presented to the Parliament and to the Venice Commission. Furthermore, the Council of Europe intervened in a moment of high constitutional crisis and provided a framework for consensus-building between the opposed parties. However, the outcome of this process was not fully transposed to the final version of the Constitution that was adopted the 25 July 2000.

The reduced representativeness of the Constitutional reform in the case of Moldova is illustrated by the short period in which it was drafted and adopted. The hastiness of the process is even more obvious when considered that in just one year four different versions of the Constitutional amendment were considered by the Parliament and different initiating committees were established for this purpose. This increased competition between party factions and political fragmentation does not necessarily guarantee more inclusive or more participative policy-making. On the contrary, in spite of the definition of Moldova’s regime as “pluralist by default”, the instrumental use of political institutions and the closed parallel negotiation limit the transparency and the inclusiveness of the political system. These dynamics bring it closer to a façade democracy than to an actual competitive democracy that provides equal opportunities to its citizens. It is important that the lack of a unified power structure and/or unique mass political party sets its transition on an institutional path-dependent trajectory of parliamentarian and more pluralist political system. However, the instrumental use by the different political faction make impossible the effective exercise of citizens’ political rights in conditions of freedom and equality.

## ***II. IMPLEMENTATION OF THE REFORM AND IMPACTS***

After the adoption of the Constitutional reform, the new President needed the support of three fifths of all MP (61/101 MP) to be elected. However, in 2000 after three votings no

candidate could reach this majority, which allowed Lucinschi to dissolve the Parliament and call new elections (Roper, 2008). Similar and even deeper crisis unfolded in 2009 – 2010 when the next transfer of power took place. These deadlocks were consequence of the high majority required for the election of the President. In addition, the electoral code was amended in 2001 and the threshold increased to 6% (Ruthrauff, 2017b). Consequently, the Communist Party (PCRM) received “over 50% of the popular vote and 71% of the parliamentary seats”, which allowed it to come to power with significant majority and to govern for two mandates until 2009 (Roper, 2008: 122). Subsequently, Voronin, the PCRM candidate was elected as President and counted with the unconditional support of the disciplined party structure of the PCRM, which provided him with a substantial majority in Parliament during his first mandate.

This outcome is significant also because it was not intended by the promoters of the 2000 Constitutional amendment. The party forces behind the former BDPM and ADR lost power and remained in political isolation for the next decade, due to the PCRM domination. In addition, it was reported that Dumitru Diacov, one of the main promoters of the transition to parliamentary system, “expected the new president to be a compromise figure, a technocrat who was not representative of any party [...] as a kind of broker facilitating policy making in a divided parliament” (Hale, 2015: 377).

This change of political power that took place in parallel to the transformation of the political system in parliamentary model, clearly illustrates how the trends of political competition influence and transform the performance of the institutional framework. Due to the more disciplined and cohesive structure of the Communist Party, this was the only period when one-party parliamentary majority managed to control the state institutions (Way 2015; Freedom House 2017). Unlike Armenia and Georgia, Moldova’s Parliament was controlled by a disciplined centralised majority only during the first government of the PCRM between 2001 and 2005 with 71/101 seats. The main feature of the PCRM period is “the domination of the parliament by an overwhelmingly strong Communist faction, which is directed mainly by its party and not by its voters” (Neukirch, 2001: 12). This power concentration in the Communist party and the President reduced the role of Parliament as a decision-making body (Way 2015).

As a consequence of this power concentration, the use of authoritarian practices significantly increased between 2001-2009, while the opportunities for the opposition to challenge the government were reduced. Like the campaign against the 2013 Referendum in Armenia, opposition leaders in 2005 and 2009 electoral campaigns faced special “difficulties in finding sites for meetings”, in attracting donations from private sources, and “public

employees were discouraged from attending pro-opposition rallies” (Way 2015: 111). The greatest limitations were in the field of media pluralism, which led to the definition of Moldovan media as “not free” in 2004. The Freedom House Index increased to 3.5 and 4 (Way 2015; Freedom House 2017). In 2002 journalists and media workers organised protests against censorship of the state-owned TeleRadio Moldova that was also criticised by domestic and international organisations (Freedom House, 2004). In spite of these limitations, opposition media continued providing certain space for the expression of alternative perspectives (Way 2015). Lastly, several NGOs reported that the PCRM government openly supported and exerted pressure on public employees to become members of one of the main trade unions – Solidaritatea (Freedom House, 2007; Vitu and Scores, 2008).

The transition from a PCRM to a centre-right government took place between 2009 and 2012, a period that was defined by institutional deadlocks of the presidential selection (Popescu 2012). The unstable pro-EU coalition - the Alliance for European Integration (AEI) replaced PCRM’s centralisation by complex coalition-building, unsustainable governmental changes and institutional deadlocks. Between 2009 and 2015 Moldova had “three parliaments, three prime ministers, five governments, [...], one president, two interim presidents and two of the three governing parties split” (Popescu 2015: 2). This complex governance made it impossible to limit media freedom and as a consequence media pluralism increased (Popescu 2012). However, Moldova’s better democracy index’ scores for this period contrast with the negative corruption and state-capture assessments (Tudoroiu, 2015). As described in Chapter V, the state capture during this period was defined by the domination of state institutions by narrow party interests, while political parties were used as an instrument for the promotion of oligarchic interests. The lack of capacity to access funding through affiliates, led to dependence of political parties on the business sector, as was illustrated by Vlad Plahotniuc and Vlad Filat.

Between 2015 and 2016 several corruption scandals were uncovered and in 2016 the National Bank issued bonds to repay the “theft of the century” (Alaiba, 2017). Social protests against the control of institutions by oligarchs became recurrent in 2015 and 2016 and led to the emergence of the Dignity and Truth platform, which involved prominent journalists, social activists, members of CSO and lawyers. It later gained an important role as political party (ACUM) (Demytrie, 2015; Bumbu, 2016). Against the background of social protests, the coalition government did not survive a no confidence vote in December 2015 and the PLDM refused to take part in a government led by Plahotniuc or by Pavel Filip from PDM.

In January 2016 a “new government was invested”. It was led by Pavel Filip and supported by “20 deputies from the PDM, 13 deputies from the PL, 14 ex-communist deputies, 8 deputies from the PLDM and 2 former PLDM deputies” (Alegeri.md, 2019). In spite of counting with only 19 deputies in the Parliament, the PDM (Democratic Party) managed to gather a parliamentary majority. Against this background, in November 2015, 18 MPs from the PLDM had filed a complaint to the Constitutional Court against the 2000 Constitutional amendment. They referred to the mechanism for election of President “by a vote of 3/5 of the total number of MP”, without challenging “any other amendments, which did not essentially alter the content” (Constitutional Court Republic of Moldova, 2016: 2). As a consequence of this complaint, the 16-years long procedure of indirect Presidential election was declared unconstitutional and the direct election of the President was restored (Ruthrauff 2017).

The complaint to the Constitutional Court had a procedural basis and it claimed that the text of the Constitutional amendment was changed without the compulsory consultation of the Constitutional Court. Two aspects were changed after the opinion of the Constitutional Court of the first draft (05 July 2000) and before the adoption of the final version of the amendment (21 July 2000). Firstly, the majority required for electing the President was increased from a simple majority to three fifths of all MP. The Constitutional Court approved the unconstitutionality of the increased majority and removed the indirect election of the President. An additional reason for this decision, were the political deadlocks, produced as a consequence of the application of this requirement in the highly fragmented political context of Moldova. All Presidential elections that implied power transfer led to a political crisis.

The second provision included in the complaint to the Constitutional Court was the increase of the minimum age required to be a presidential candidate from 35 to 40 years. However, this age requirement of 40 years for the presidential candidates was maintained, because, as pointed by the Constitutional Court, it was not challenged by the complainants. This step was harshly criticised given that it was part of the same article, and it was changed by the same procedural violation. In addition, civil society organisations argue that maintaining this age requirement was instrumental in limiting the access of two alternative candidates: Renato Usartii and Dorin Chirtoaca, that were younger than 40 years (Secrieru, 2016; MOL13).

This Constitutional decision had both domestic and international consequences. It effectively contributed for reducing the social protests, giving way to electoral competition for the Presidency between the main leaders of the protests. It was argued that the timing and the outcome of the Constitutional decision were very convenient for the ruling party PDM. The

decision had a “divisive effect on the opposition”, including left and right , as well as pro-EU and pro-Russia opposition, which until that point were “bounded together to challenge the new parliamentary majority accused of corruption and resistance to investigate the huge fraud in Moldova’s banking sector” (Secieru, 2016). Therefore, domestic analysts claim that this concession to the opposition’s demands was conveniently used by the PDM for perpetrating its control over representative institutions.

In terms of procedure, it effectively reduced the potential for deadlocks, improving the election method. However, the conflictual relations between the directly-elected President and the Prime Minister defined the period of cohabitation after the 2016 Presidential elections. For instance, after the election of the PSRM candidate, Igor Dodon, the Parliament has suspended him on repeated occasions when he opposed the governmental decisions (IPN Moldova, 2018b). Besides, this decision of the Constitutional Court contributed for the growing social criticism against state capture and political control of key institutions, as the Constitutional Court by corrupt parties as the PDM. The abolition of the indirect election gave the impression that the Constitutional Court delivers judgements that are convenient for the PDM government. This criticism on political influence applies to Rule of Law institutions, as Judiciary and Prosecution, but has affected significantly the Constitutional Court as well.

The most notorious and illustrative cases of lack of independence of the Constitutional Court took place in 2018 and 2019. Between 14 and 17 December 2018, three members of the Constitutional Court resigned, and their substitutes were elected in a non-transparent procedure. This selection was criticised by domestic and international observers, due to the procedure and the political links of the elected Judges with the PDM, which had negative implications for their integrity. For instance, Corneliu Gurin was linked to the PDM through the 2010 secret annexes for distribution of “independent institutions” among the AEI coalition members. In these annexes the Prosecutor General was controlled by the PDM and subsequently Corneliu Gurin received this position. The other two Judges selected, had been members of the PDM, which raises serious doubts on their independence (Legal Resource Center from Moldova, 2018a). In addition, the newly appointed members “have previously been Prosecutor General, director of the intelligence service and chair of the legal committee of Parliament, part of the then ruling political majority” (International Commission of Jurists, 2019). All these positions are defined by their political links to the government and to a culture of obedience and discipline, rather than impartiality.

The bias of the Constitutional Court towards the PDM government was demonstrated in 2019, when it tried to prevent a coalition agreement between the PSRM and ACUM. The PDM claimed that the PSRM and ACUM missed the deadline for convening a new government and that the President Igor Dodon failed to call new elections. The Constitutional Court availed this claim, dismissed President Dodon and installed the former Prime Minister Filip, who promptly dissolved the Parliament and called new elections. After these events the Venice Commission concluded that “[t]he conditions for the dissolution of the Parliament clearly did not exist” (Venice Commission, 2019: 16). In addition, the Venice Commission pointed that it accepts to assess the judgement of a Constitutional Court only in exceptional situations when “the robustness of State Institutions in the country in line with the Constitution be seriously undermined and the democratic functioning of state institutions be irreparably compromised” (Venice Commission, 2019: 17). In addition to this statement and after international pressure (from the EU, Russia and the USA) the coalition government of PSRM – ACUM was established, and the Constitutional Court abolished its previous decision. Subsequently, when the PSRM-ACUM government came to power, it asked all the Constitutional Court judges to resign, as they had lost legitimacy. This exceptional development led to the resignation of all the members of the Constitutional Court (RFE/RL’s Moldovan Service, 2019). This crisis of the Constitutional Court came in the context of generalised domestic and international criticism against the Judiciary in Moldova and showed the importance of the Rule of Law for an effective inter-constitutional accountability.

### ***III. CONTEXTUAL FACTORS***

Moldova’s transition is defined by a more fragmented national identity and decentralised political system. Its structural conditions predefined a very complex issue structure, which includes inter-ethnic relations and national identity. The overlapping of these issues served as a basis of a more complex, fragmented and in occasions polarized party system, with systemic institutional deadlocks. The identity division is between those that consider themselves Romanian; those that consider themselves Moldovan, but acknowledge that the language spoken is Romanian; and those that identify themselves as Moldovans, consider that the language Moldovan and have anti-Romanian sentiments (Popescu 2012: 46). This complex identity figure finds expression in the foreign policy preferences of the population.

Similar dynamics were reflected equally in the media environment. Media remained “quite open and independent of government control” in the 1990s (Way, 2015: 108). According to domestic and foreign observers, the public TV adopted a challenging position towards the

first president Snegur. Furthermore, Moldova's media was divided between pro-Romanian and pro-Russian media subsystems, which supported different political elite. In addition, Russian TV has remained accessible during the whole transition. (Way, 2015). This diversity in both party system and media environment was defined as "pluralism by default" (Way, 2015a).

This complex national identity is rooted in the long periods in which Moldova was part of Romania or Russia/Soviet Union (Popescu 2012). In addition, two internal secessionist conflicts marked Moldova's political transition during the 1990s. If the institution of Gagauzia's administrative autonomy successfully de-escalated this conflict, the civil war in Transnistria led to its de facto independence and the reinforcement of historical and geopolitical divisive lines, which made impossible consensus-building across party lines (Nodia 2017; Way 2015). The last Soviet Parliament at the beginning of the 1990s was dominated by the Popular Front, which was composed mainly of ethnic Moldovans and pursued "pro-Romanian and pro-unionist agenda that alienated the Russian minority" in the country (Schmidtke and Yekelchik, 2008). As a reaction the authorities in Tiraspol declared the independence of the Transnistrian Moldova Soviet Socialist Republic, leading to an escalation and a civil war. The losses in this war led to the resignation of almost all members of Moldova's government. Contrary to these weakening effects of the conflict on Moldova's leadership, the Transnistrian elite (like the Armenian one) solidified its control of the institutions (Schmidtke and Yekelchik, 2008).

These events led to the reorientation of Moldova's foreign policy. In 1994 elections a former-nomenklatura pro-Russian party, the Agrarian Democratic Party (ADP) gained parliamentary majority. In spite that this party was established by the President Mircea Snegur, the Parliament did not support his initiative for a fully presidential republic, which was partially due to the frequent changes in his party alignment and the losses in Transnistria. Specifically, Snegur, who also was the last chair of the Supreme Soviet, initially supported the pro-Romanian Democratic Front and later the pro-Russian ADP (Way, 2015a). Consequently, the 1994 Constitution established a premier-presidential model, which limited the role of the President to a greater extent in comparison to the mixed models established in other post-Soviet countries (Roper, 2008). The directly-elected president could issue decrees, call a referendum, but his veto could be overturned by a simple majority. In addition, the Constitution required consensus-building between the executive and legislative for the appointment of the cabinet. The President could dismiss the Parliament after a three-months deadlock (Roper, 2008).

The 1994 elections, that took place after the domestic civil war, led to the reorientation of Moldova's foreign policy towards Russia and its membership in the Commonwealth of Independent States (CIS) (Schmidtke and Yekelchik, 2008). As a consequence of the conflict

and the party fragmentation, at the 1996 presidential elections Snegur competed with his former allies - the parliamentary speaker Lucinschi, who had adopted a leading role in the 1994 constitutional-drafting process and the former Prime Minister Sangheli. The campaign was dominated by foreign policy debates and the Transnistrian conflict. Snegur adopted a pro-Romanian stance and was supported by the Popular Front, while Lucinschi and Sangheli focused on a pro-Russian position and the resolution of the conflict. If Sangheli was supported by the ADP, Lucinschi ran as an independent candidate (Way, 2015a). The conflict between these three factions affected other state bodies, as the military. However, no one could mobilise or use these bodies or their resources against the other candidate, which made impossible the consolidation of a centralised power system. The outcome of the second round of elections led to the election of Lucinschi as the second president of Moldova.

However, for Lucinschi (1997 – 2001) faces important difficulties in consolidating parliamentary support around his figure. Many MPs left the ADP and a pro-presidential party Bloc for Democratic and Prosperous Moldova (BDPM) was established and integrated in the Alliance for Democracy and Reform (ADR), together with the Bloc of Democratic Convention of Moldova and the Party of Democratic Forces. After the 1998 elections the ADR controlled 61 MP out of the 101 Parliament. In spite of these developments, the weakness of the political parties in Moldova undermined the efforts of Lucinschi to consolidate his leadership (Way, 2015). The ADR and the BDPM started to disintegrate and the criticism against the President was publicly voiced more and more frequently after the 1998 elections. In addition, it is important that the lack of capacity of Lucinschi to develop effective economic reforms was felt in a very direct way by the population, given the progressively deepening economic crisis in the country. In spite of the economic support of Russia to the President Lucinschi after 1994, the economic crisis which devaluated the Rubble in 1998 affected Moldova very negatively. The negative consequences of these economic grievances were worsened, due to the difficulties in adopting economic reforms and transforming the state-led into private economy, due to the lack of effective parliamentary support to the President.

In conclusion, the demise of the Communist Party in the 1990s was followed by “a string of short-lived, weak, and "embryonic" parties”, which allowed party defection, strengthened the opposition and posed challenges to power centralisation (Way 2015). The first two presidents of Moldova had to adapt to unstable majorities in the Parliament, which prevented the consolidation of presidential or semi-presidential regime. These conditions contrast with the developments in Armenia and in Georgia in the same period. The devastating

civil war in Georgia and the existential threat posed to Armenia required stable leadership in order to guarantee the recovery of the state capacities. In both cases the Parliament provided the required support to a centralised and strong Presidential figure. The absence of a centralisation trend similar to the one in Armenia and Georgia, in spite of the secessionist demands, is explained with the “lack of any significant number of internally displaced persons or spill-over effects of the conflict [...], and by the absence of any visible threat to the survival of the state (as in Armenia)” (Popescu 2012: 48). Furthermore, the relatively low and disperse economic power also contributes for a more pluralist institutional system (Way 2015).

Such lack of a unified power structure and/or unique massively supported political party set the first twenty years of Moldova’s transition on an institutional path-dependent trajectory of parliamentary pluralist political system, in comparison to Armenia and Georgia. In spite that both Snegur and Lucinschi, promoted Constitutional drafts that sought to reinforce the role of the President, due to the lack of parliamentary support they had to oversee consecutive reforms that limited the President’s power and strengthened the Parliament. (Hale 2015: 167). The competition between domestic actors and the influence of external actors (analysed below) further clarify the evolution of the 1999-2000 Constitutional reform process.

#### ***IV. DOMESTIC COMPETITION AND PARTICIPATION***

The reform process in and the actual functioning of the mechanisms for inter-constitutional accountability analysed above show several trends of domestic competition and participation. Firstly, they show how domestic actors use political reforms according to their preferential fit and for strengthening their power positions in the political system. Secondly, for this purpose they engage in fluid and unstable political alliances that influence the institutional performance. Specifically, the dynamics of political, and even intra-party competition influence the performance and effectiveness of inter-constitutional mechanisms of accountability. Thirdly, the proper functioning of the mechanisms of inter-constitutional accountability depend to great extent on the respect of Rule of Law and the informal trends of competition that influence independent and oversight institutions as the Constitutional Court.

Regarding the first point on the adjustment of political and institutional reforms, according to the interests of the domestic political actors taking place in the process, it was observed how both Lucinschi and Diakov both changed their preferences regarding the future model of governance. While Lucinski had supported in the past parliamentary model, in 1999 he supported a strong presidential system. On the other hand, Diakov recognised that his preference for the parliamentary system was the only way to stop Lucinschi who he considered

to be “totally unreliable” (Way, 2015: 111). This dynamic is illustrative how the vast parliamentary majority that adopted the Constitutional amendment was acting against someone (the president and his power), rather than in support of parliamentarism due to their convictions. Such instrumental use of the institutional reforms shows the limitations of purely normative explanations of institutional and political change in this context.

Secondly, the case of Moldova and the different periods of government show clearly to what degree the dynamics of domestic competition define the effectiveness and the general performance of the mechanism of inter-constitutional accountability and of the reforms. For instance, in spite of the semi-presidential system during Lucinschi’s government, in the late 1990s he did not manage to centralise power and to adopt decisive economic measures. This was mainly due to the lack of stable political parties and certain competition trends in this period. However, the period of government of the Communist Party (2000-2009) was much more centralised in spite of ruling in a parliamentary system. This power concentration and subordination of the model to the presidential decision was possible, due to disciplined and cohesive structure of the Communist Party. Lastly, the unstable pro-EU coalitions that governed between 2010 – 2018 were defined by lack of capacity to adopt effective decisions and the patrimonial control of key democratic institutions, as was illustrated by the composition and the decisions of the Constitutional Court in 2018 and 2019. This paradox in the performance of the political system is explained by the dominant dynamics of political competition in the country and in the governing party or coalition.

The PCRM is highly institutionalised and disciplined party, as a result of its roots in the Soviet political regime. This comparative advantage clearly contrasts with the fragmentation of the pro-EU political spectrum, that recurs to unstable coalitions incapable to concentrate power (Berglund *et al.*, 2013; Way, 2015a). The fragmentation of the party system during pro-EU government and power concentration in PCRM rule is illustrated by the effective number of parties in parliaments. The effective number of parties has steadily increased since 2004 (from 1.84 to 4.80 parties), which shows the transition from the Communist Party government to the succession of several pro-European coalitions after 2009.

Furthermore, power concentration was also the outcome of the trends of internal competition in the PCRM and the central position adopted by Voronin. After he was elected President of Moldova, he was also confirmed as party chair of the PCRM, which allowed him to secure control of key positions as the chair of the parliamentary faction, speaker of the parliament and Prime Minister. This power distribution gave him the possibility to centralise the control of all essential decisions in the country. Furthermore, the assumption of a dominant

role by Voronin is illustrated by his promise of a “technocratic government” and by his personal involvement in ministerial selections. He also announced the dismissals of the foreign and energy ministers in 2001 (Roper, 2008). Therefore, the weak and decentralised institutional system was captured by the disciplined top-down oriented PCRМ, adopting the organisational features of the party. Therefore, the Communist party “became the main locus of decision-making” in the country, defined by “cohesive and predictable outcomes” and by “unanimous voting, which strongly contrasted with the elite defection of the previous decade” (Way 2015: 111). This power concentration in the hands of the Communist party and the President reduced the role of Parliament as decision-making body (Way 2015).

The reform processes of inter-constitutional accountability analysed in this chapter also illustrate the dynamics and the relevance of this domestic competition. The Figure 4 below shows the affiliation network built on the basis of the Joint Committee which included representatives of the President and of the Parliamentary majority. The affiliation network illustrates to what degree the Parliament constitutes the central institution for the reform process, in spite of the semi-presidential framework in which it took place. All the members of the Committee are linked with the Parliament, while only one of the members has relation with the Presidency. Therefore, it is possible to conclude that the actual operation of the institutional system and reform counted much more on the parliamentary dynamics, where the competition between different political groups effectively took place, rather than on the presidency.

Furthermore, this observation is confirmed by the regret expressed by Lucinschi that he “did not have an official presidential representative to look out for his own interests in parliamentary discussions on such reforms” (Hale 2015: 167). As the Figure 4 shows the only institutions that are less important than the Parliament, and have more than one connection, are the Prosecution office and the Communist Party. They are both connected to two members of the Committee. Lastly, most Committee members are linked with one connection to the executive and to political parties. This illustrates the importance of the political features of the process, rather than the members’ academic or judicial background, which is almost completely lacking. Therefore, the Joint Committee of Presidential and Parliamentary representatives show that the dominant institutions in the process are the Parliament and the government, rather than the Presidency, as would be expected in a semi-presidential system. This dynamic is representative of the functioning of the political system in the late 1990s, when the President struggled to find parliamentary support for his initiatives.

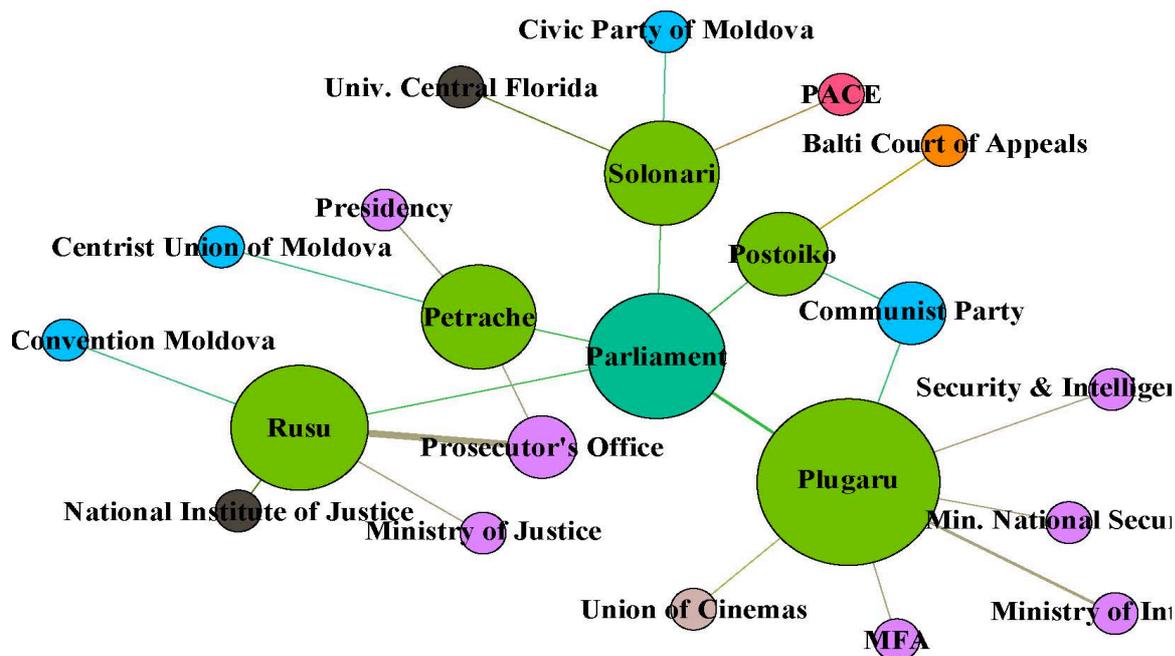


Figure 17. Affiliation Network Joint Constitutional Commission Moldova 2000.

The affiliation network above also confirms that this committee had mainly political goals as it was set up in order to solve the differences between the competing domestic actors in the framework of the reform process. These political features are even more relevant at the light of above conclusion the 2000 constitutional amendment was an expression of the personalist conflict between the President and parliamentary majority. Therefore, in the context of a reform process, which was instrumentally used by the representatives of both institutions to improve their power positions, several constitutional committees were established, and drafts were presented to the Parliament and to the Venice Commission. In spite of this high number of alternative drafts and platforms, the Constitutional reform was adopted in one year, which confirms the lack of openness and inclusivity of the process. This process, therefore, made impossible the effective citizen participation in equal conditions.

The last trend of political participation and competition is illustrated by the period of government of the pro-EU coalition and the decision of the Constitutional Court to re-establish the direct presidential election. The government of Pavel Filip invested in 2016 with the support of “20 deputies from the PDM, 13 deputies from the PL, 14 ex-communist deputies, 8 deputies from the PLDM and 2 former PLDM deputies” is a representative case (Alegeri.md, 2019). This development also illustrates how the decision-making depends on the fluid coalitions and uncertain loyalties of political parties. In spite of decreasing legitimacy and corruption scandals, a PDM government, which had only 20% of MP, guaranteed parliamentary majority.

Therefore, it is interesting the statement of an interviewee that in Moldova Plahotniuc is the CEO of the country and acts as such, as he can buy everything. He can buy the opposition and the media (Interview 10). Therefore, the informal links between the political parties lead to their influence on and control of democratic institutions in benefit of their preferential fit in terms of power positions. The conformation of parliamentary majority in support of the PDM based on the support of the Liberal party, “defectors from the Communist Party, the Liberal Democrats and one socialist” is an example of such fluid coalitions (Levcenco, 2016).

The complaint to the Constitutional Court and the decision issued by it in 2016 has also been interpreted in these terms of instrumental use of the political institutions. The Figures 5 A and 5B below represents the affiliation network built on the basis of the biographies of 18 MP that filed the complaint in November 2015. They challenged the 2000 Constitutional amendment, referring to the mechanism for election of President “by a vote of 3/5 of the total number of MP” (Constitutional Court Republic of Moldova, 2016: 2). As a consequence of this complaint, the 16-years long procedure of indirect Presidential election was replaced by direct election of the President (Ruthrauff 2017). Figure 5A includes all actors except the Parliament and PLDM, as they are common to all nodes. This simplified version of the affiliation network allows to easily read and analyse the main connections between the deputies that filed the complaint. The Figure 5B includes also the Parliament and PLDM just to show that all the complainants are affiliated with both organisations.

The trajectories of these MP are relevant for understanding the trends of domestic competition and transformation of the institutional framework, given that the Constitutional Court decided to stick to the issues raised in the complaint without applying the same principle to the other aspects changed by the 2000 Constitutional amendment as result of the same procedural violation. This was the case of the minimum age required for the presidential candidate, which remained 40 instead of being reduced to 35. Therefore, the choice to exclude from the complaint this decision equals drafting power, as the complainants defined the limits of the Constitutional Court decision and the future procedure to be applied in elections. Specifically, when applied to the 2016 presidential election, they excluded two popular candidates that were younger than 40 years - Renato Usartii and Dorin Chirtoaca, (Secieru, 2016; MOL13). In addition, the re-establishment of presidential elections benefitted the PDM as it contributed for reducing the social protests, by opposing in electoral competition the two main parties that supported the protests against the oligarchic PDM government. Specifically the second round of the 2016 presidential elections was between Maia Sandu, the ACUM candidate, and Igor Dodon, the leader of the Socialist Party of Moldova (PSRM).

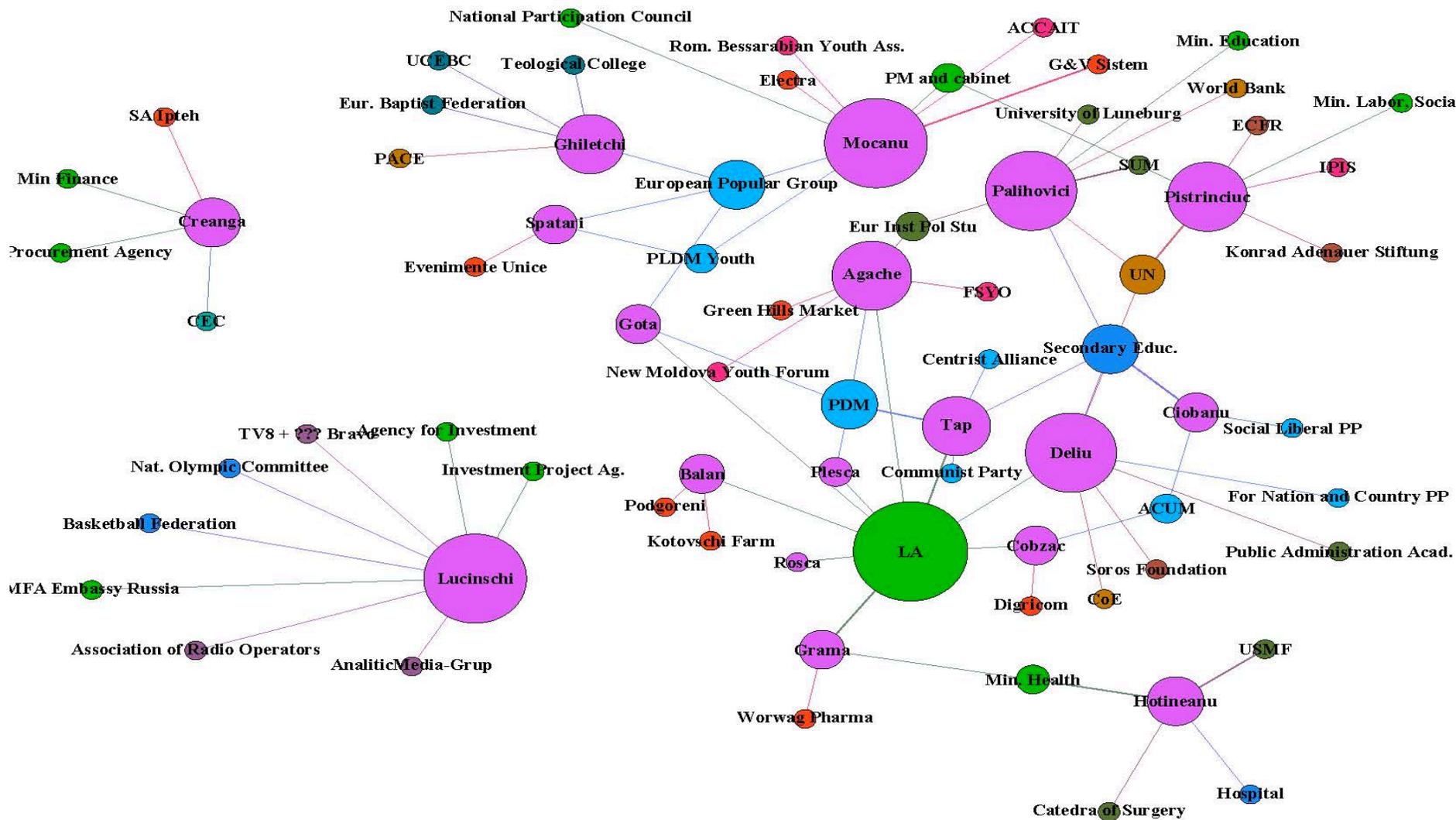


Figure 18A. Affiliation Network 18 MP who filed a complaint to the Constitutional Court Moldova 2016 (only relevant actors)



A central role in this affiliation network play the political parties. Even in Figure 18A, when PLDM is excluded, political parties continue to be the most important type of organisations. The variety of party membership of the complainants is representative of the fluidity of the party system in Moldova, with the exception of the PCRM. In this sense, it is important that the majority of individuals that in 2015 filed the complaint to the Constitutional Court have afterwards been expelled or have abandoned voluntarily the PLDM. For instance, four complainants were at some point members of the PDM. Other four complainants became members of the parliamentary group European Popular Group, which was established after several PLDM members were excluded from the party in February 2016, shortly before the adoption of the Constitutional Court judgement. These members represent a significant part from the nodes in the Figure 18 and were excluded due to their support of the PDM on several occasion, in spite of the open opposition of the PLDM.

This is the case of 7 PLDM deputies who voted for the PDM (Filip) government in December 2015. Those PLDM members that voted for the Filip (PDM government) were considered as disloyal to the party and/or bribed, given that their assets were also investigated by media and CSO. The fact that four of the seven excluded members were among the complainants, while other three were affiliated with the PDM, illustrates to what degree they were seen as disloyal party defectors later when they supported Filip's government together with other PDM initiatives. This criticism to the excluded PLDM members becomes even more relevant given that without their votes Filip's government would not have been approved and new elections would be called. Against the background of increasing social criticism against the PDM and almost permanent street protests, this support of the PDM-backed government was a very indicative vote (Anticoruptie.md, 2016a). It is important, however, in spite of this accusation of disloyalty, the direct Presidential election is one of the long-standing demands of the PLDM. This circumstance gave certain legitimacy to the complaint filed by the PLDM MP. Lastly, it is important to mention that many of the complainants have a background in the local authorities and secondary schools. The high level of local authorities' affiliation is significant given that mayors are under pressure for providing support to the governing elite.

This dynamic of party competition was further strengthened by the notorious cases of violations of the Rule of Law and inter-constitutional accountability in the country in 2018 and 2019. The 2019 decision of Constitutional Court is the most significant such example. The resignation of three judges and the selection of new members of the Constitutional Court in three days reveals certain informality in the selection procedure. In addition, the links of the

newly selected judges to the PDM and to executive institutions also raised serious doubts regarding their independence. Specifically, the three new judges had “have previously been Prosecutor General, director of the intelligence service and chair of the legal committee of Parliament, part of the then ruling political majority” (International Commission of Jurists, 2019). These concerns were later confirmed when the Constitutional Court dismissed the President Dodon, installed the Prime Minister Filip in order to prevent the ACUM-PSRM coalition from taking effectively power. This sequence shows how the weaknesses in Rule of Law have allowed the dynamics of informal party competition to dominate key institutions for inter-constitutional accountability rendering the meaningless and toothless instruments in the political struggle. The intervention of international actors helped to recognise this situation.

Lastly, it is important that at this point the political competition has altered its features, and the ACUM party had consolidated around the leaders of the 2015 and 2016 social protests – Maia Sandu (PAS) and Andrei Nastase (PPDA). They were part of a group of prominent journalists, social activists, members of CSO and lawyers that initially gathered around the Truth and Dignity Platform and clearly represented the pro-EU alternative. Besides, the former communist party had fragmented in two factions: the former PCRM (which gained 21 MP) while the PSRM of Igor Dodon (with 23 MPs) (Alegeri.md, 2019). This different fronts of the political competition showed also the increased geopoliticisation of the political competition.

## ***V. INTERNATIONAL FACTORS***

Moldova’s international links in the 1990s were defined by the dominant role of Russia. Like in the case of Armenia and Georgia, Russian military presence in Transnistria was an important leverage. During the civil war, the pro-Russian 14-th Army distributed weapons to Transnistria. Consequently, Moldova’s police service was “outnumbered and outgunned”, and a ceasefire agreement was signed in 1992 (Way, 2015: 105). In spite of accepting the withdrawal of Russian forces in 1994, in 2007 fewer than 2.500 troops remained in Transnistria, including “a massive amount of ammunition and equipment” (Roper, 2008: 85). In spite of having agreed by the Istanbul Convention to unconditionally withdraw all its troops by 2002, this never happened, remaining Transnistria one of the longest frozen conflicts. Russia makes the military withdrawal conditional on the settlement the conflict (Roper, 2008).

In addition, as in Armenia, Russia’s economic leverage in terms of trade and gas imports was significant. During the civil war, Russia imposed an economic blockade of Moldova, which increased the urgency of the situation and in 1992 Snegur sought the support of the pro-Russian ADP, abandoning the pro-Romanian Democratic Front (Way, 2015: 105).

Consequently, Russia was the main trade partner of Moldova during its first decade of independence, when its export share remained between 62% in 1997 and 41% in 1999. Moldova imports from Russia in this period represented at least 20% and concentrated in the energy sector. As with Armenia and Georgia, this trade balance was successfully used for positive and negative conditionality in reaction to elite changes and political developments. For instance, when Lucinschi became President, the trade between the two countries increased until the 1998 economic crisis in Russia (Roper, 2008). Russia's economic crisis in 1998 influenced very negatively Moldova's development. In addition, the negative relations with Russia on Transnistria, the domestic divisions and the dependence on external support did not allow Moldova to consolidate as a fully-dependent on Russia authoritarian regime.

Against this background the EU's involvement in Moldova during the 1990s was very limited. Both Snegur and Lucinschi expressed their desire for closer cooperation with the EU, including an associate member status. However, they were offered the same cooperation framework as most post-Soviet EU neighbours. A Partnership and Cooperation Agreement was signed in 1998, with the corresponding access to the Technical Assistance to the Commonwealth of Independent States (TACIS). Romania was its third trade partner in the 1990s, receiving between 10% (in 1996) and 26% (in 2000) of Moldova's exports (Roper, 2008). However, the lack of preparedness for EU membership, the internal conflict and the social divisions made impossible the close cooperation with the EU in the 1990s.

In contrast to the EU, the Council of Europe played an important role in the Constitutional reform in Moldova. It is reported that the Council of Europe insisted against the adoption of a presidential regime to the first two presidents of Moldova. Therefore, according to Snegur the adoption of less centralised mixed system in 1994 was one of the reasons for Moldova's early membership in the organisation. Moldova was the first CIS country to become member of the Council of Europe in 1995 (H. Hale, 2015b; Way, 2015a). This positive conditionality and socialisation efforts exercised by the Council of Europe in the 1990s is claimed to be a critical juncture in the development of Moldova's political system towards the parliamentary model. Besides the Baltics states, Moldova is the only post-Soviet parliamentary democracy, which differentiates it clearly from the regional dynamics.

The Council of Europe (CoE) also had a key contribution for the resolution of the political conflict between the President and the Parliament in the 1990-2000 Constitutional reform. At the end of 1999 the Parliamentary Assembly of the CoE supported a compromise between the parties through the establishment of a committee with representatives of both sides, which was chaired by a representative of the CoE - Mr. Malinverni. The CoE exerted

influence, beyond its consultative role and provided a relevant framework for the advancement of the reform process. This Joint Committee met three times between March and May 2010 and adopted a commonly agreed text with the exception of the right of the President to dismiss the Prime Minister and the reform of the electoral system (Venice Commission, 2000).

In the next stage of the transition, during the PCRM government between 2000 and 2009 a change in identity and education politics was also introduced, in spite of increase in domestic protests. The history of Moldova was taught, and the language was referred to as Moldovan, rather than Romanian, in addition to the proposal of compulsory Russian language. These cultural policies indicated the geopolitical reorientation and the high expectations regarding the resolution of Transnistria's conflict. However, both Moldova's reorientation towards Russia and the resolution of Transnistria's conflict did not develop as expected.

The initially successful negotiations with Transnistria, led to the Kozak Memorandum promoted by Russia, which required the creation of a Senate in which Transnistria and Gagauzia would have 13 out of 26 representatives. The political and social opposition to this initiative increased, as it would give the secessionist regions considerable veto power. International actors, as Romania and the EU also criticized it (Schmidtke and Yekelchyk, 2008). In parallel, Russia's government did not provide any significant concessions in energy negotiations "and it completely sidestepped Moldova in discussions of a Single Economic Space with Belarus, Kazakhstan, and Ukraine in 2003" (Way, 2015: 112). The high sacrifices required by Russia led to worsening relations between Moldova, Transnistria and Russia. Voronin declined to sign the Kozak Memorandum one day before the arrival of the delegation, which hindered a sustainable cooperation between Moldova and Russia (Berglund et al., 2013). Consequently, Voronin considered the EU as a "much more reliable partner than Russia", while the relations between Putin and Voronin became more complicated (Schmidtke and Yekelchyk, 2008: 92). Moldova's exports to Russia constantly decreased from 48.3% in 1995 to 20.8% in 2012 (Vaduva & Thomas 2015:100).

The 2016 decision of the Constitutional Court also had important implications in terms of international and geopolitical development. The 2016 election of the PSRM candidate Igor Dodon, led to an effective cohabitation between pro-EU government and pro-Russian president. Therefore, if the EU integration had become the consensually accepted geopolitical choice after the Kozak Memorandum, the revelation of the corruption scandals committed by pro-EU coalitions, affected negatively the image of the EU and reduced the domestic support of EU membership, making it almost even with the support for the EEU membership. For

instance, in 2016 38% of all surveyed supported a Moldovan membership of the EU, while 40% favoured joining the EEU (Baar & Jakubek 2017: 86). The 2016-elected President Igor Dodon from PSRM was an expression of this process and opened an institutional path for closer Moldova-Russia relations (Radio Free Europe, 2017b).

As a consequence of these events, Russia increased the positive incentives for Moldova, which effectively reinforced the image of Dodon and the PSRM. Even before the elections one of the main promises of Dodon was to approach the EEU for closer relations. Consequently, Moldova was granted an observer's status to the EEU. In addition, his electoral victory in 2016 was followed by more permissive stance towards Moldovans working in Russia and the possible acceptance of "Moldova's participation in two free trade areas – but only when Dodon came to power" (Makarychev 2018: 13). Furthermore, from January 2019 entered in force a temporary agreement between Russia and Moldova which cancels the "customs duties of certain products ([which were] unilaterally imposed by the Russian Federation to sanction Moldova for signing the EU Association Agreement)" (Gumene, 2019).

This use of the leverage model by Russia and the differential empowerment of domestic actors by the EU and Russia has led to the redefinition of the party system in Moldova. These events allowed the conformation in 2019 of a very unstable and unexpected coalition between right-wing pro-EU and left-wing pro-Russia forces that was supported by the EU and Russia. Both the EU and Russia have provided increased positive incentives that on the mid-to long-term leads to increased competition between these forces and potentially undermining the credible and effective consensus building. The coalitional government abandoned power less than six months after it started work, due to principled differences in the field of Rule of Law and more specifically the reform process of the Prosecution Office. However, it has been notorious that the PSRM-ACUM coalition which governed in 2019 challenged the main geopolitical divisions in the country. The tensions between the previous PDM government and Russia and the desire to increase the role of the pro-Russian candidate are the possible reasons.

In 2019 again an opinion of the Venice Commission was key for the resolution of the political crisis that emerged between the PDM and the ACUM-PSRM government, as well as between the Parliament and President on one side and the Constitutional Court on the other. The Venice Commission concluded that "[t]he conditions for the dissolution of the Parliament clearly did not exist" (Venice Commission, 2019: 16). The Venice Commission accepted to assess the judgement of a Constitutional Court only exceptional situations when "the robustness of State Institutions in the country in line with the Constitution be seriously

undermined and the democratic functioning of state institutions be irreparably compromised” (Venice Commission, 2019: 17). In addition to this statement and after international pressure (from the EU, Russia and the USA) the coalition government of PSRM – ACUM was established, and the Constitutional Court invalidated its previous decision.

In conclusion, the domestic trends of political competition are clearly influenced and defined by the geopolitical evolution of the region, based on the mediation of the complex identity structure in Moldova. International actors as the EU and Russia successfully use this interdependence between domestic cleavages, political competition and international incentives. The Venice Commission and the Council of Europe have influenced key aspects and developments in the institutional framework and political system of Moldova throughout its transition. Its expertise in the field of inter-constitutional accountability proved to be an important socialisation mechanism in a highly politicised institutional framework.

## ***VI. CONCLUSIONS AND EFFECTS ON FREEDOM AND EQUALITY***

In conclusion, the parliamentary model of Moldova allowed both party concentration and fragmentation, depending on the intra-party competition dynamics of the governing party or coalition. The PCRM party achieved greater power concentration and use of authoritarian measures, due to its more developed structure and discipline, overturning the inertia of the parliamentary model. Therefore, the transformation from a semi-presidential to a parliamentary system was accompanied by an unexpected parallel strengthening of the Presidential figure, due to transfer of decision-making capacity from the Parliament to the internal party organization of the PCRM. Consequently, the political competition proves to be the key factor for the definition of the dominant institutional trends. The period of AEI government shows the opposite dynamic, due to its weak structure.

The network analysis of the Constitutional Committee set up in 2000 and the PLDM complainants to the Constitutional Court in 2016 has confirmed the importance of the trends of political competition and their capacity to transform the actual functioning of inter-constitutional accountability and of the reform processes accordingly. The affiliation network of the Constitutional Committee set up in 2000 for decision-making on the Constitutional reform clearly showed the domination of the parliament even in the context of a constitutional reform initiated by the President. This trend is illustrative of the resistance by the parliamentary forces against power centralisation in the Presidency.

In addition, the claim that the political competition dominates over the institutional setting, in Moldova is proven by the dynamics developed in the 2000 Constitutional reform, which was initiated by the President, but was eventually controlled by the Parliament. In spite of being a semi-presidential system, the Parliament found a way to control the process and achieved weakening the President's role. Furthermore, the 2000 constitutional amendment was an expression of the personalist conflict between the President and parliamentary majority. Therefore, the reform was instrumentally used by the representatives of both institutions to improve their power positions. Such instrumental use of the political reforms and mechanism of inter-constitutional accountability in benefit of specific political parties suggest the lack of their effectiveness and the unequal access of citizens to these institutions.

On the other hand, the affiliation network based on the group of PLDM MP that in 2016 filed the complaint to the Constitutional Court showed clearly the changing political party structure and the shifting loyalties among competing parties. Domestic observers argue that these dynamics often suggest corruption and/or political pressure, apart from the obvious party defection and lack of party discipline. After 2015 the PDM successfully used these trends of party competition in Moldova in its benefit. The support provided by PLDM defectors at key stages of the PDM government, including filing the complaint to the Constitutional Court, proves this dynamic. This strategy allowed the PDM to constitute a government in spite of having only 20% of all MP. Therefore, the use of such competition dynamics has reduced the representativity of the political system and the capacity of citizens to equally access and influence the decision-making processes. The personalist and the elitist trends of competition in the case of Moldova are strengthened by the weakening of the Rule of Law and the consequent influence and control of state institutions. This subordination of the institutions to the interests of oligarchic party leaders has rendered the mechanisms of inter-constitutional accountability, including the Constitutional Court, toothless and ineffective for the purpose that they are meant to serve. As a consequence, the majority of Moldovans are in a condition of extreme inequality and impossibility to access the mechanisms for institutional accountability.

Therefore, the greater political pluralism of Moldova is countered by the dynamics of state capture that reduce the opportunities for citizens to take part in accountability processes, leading to situation of extreme inequality. As in the case of Armenia and Georgia, unconventional participation becomes a legitimate means of expression when decisions in the institutions are adopted through non-transparent negotiations. This dynamic is representative of *façade* democracies, in which citizens' freedom and equality in the exercise of their political

rights are significantly reduced. In spite of the definition of Moldova's regime as "pluralist by default", the instrumental use of political institutions and the closed parallel negotiations limit the transparency and the inclusiveness of the political system, bringing it closer to a *façade* democracy than to an actual competitive and equal democracy. The political control and adoption of partial decisions by the Constitutional Court represent the worst example of the use of accountability institutions as a *façade* for pursuing personalist and party interests. As in Armenia and Georgia, the main political asset is the control of key institutional positions, whose effectiveness, however, is subordinate to the goals of the most influential elite group. The table 4 below shows the evolution of domestic and international aspects of the reform.

Regarding the international dynamics involved it is important that they are central to both the domestic and the international competition in Moldova. On one hand, the importance of Russia's influence is central given the presence of Russian-speaking minority in the country, and the military base in Transnistria. On the other hand, domestic elites use the competition of the EU and Russia in their benefit. After the Kozak Memorandum, Moldova was able to shift its integration preferences towards the EU, even though a PCRM government was in charge.

However, it is notorious that the geopolitical competition has intensified in comparison to the past. In the 1990s and 2000s the same incumbent elite would ponder between EU and Russia alliance, and closer relations with the EU would imply weaker links with Russia. However, after 2015 both Russia and the EU recur to differential empowerment of domestic elites, which undoubtedly polarised the social and political relations in the country. Different domestic elite in Moldova uses the opportunities provided by both actors, which reduces the role of ideas as nation-wide choice and interests, at the expense of strategic struggle between the social and political elite groups. Furthermore, this dynamic has reduced the sense of incompatibility and the need of a geopolitical choice, which was present in the case of Georgia in 2008 and Ukraine in 2013. This dynamic made possible a shortly-lived coalition between pro-EU and pro-Russian forces in 2019 that would be unthinkable in 1990s.

Independent variable	Contextual propositions 1990 - 1999	Causal propositions 1999 - 2001	Outcome	2016 Constitutional Court decision
Secessionist conflicts in Gagauzia and Transnistria  Weaker state administration	Decentralised political system, due to weak party structures	Constitutional referendum and reform introduced as an <b>effort power centralization by the President.</b> Parliamentary dominated process. Joint Committee (between Parliament and President) with Venice Commission support	<b>Parliamentary system adopted</b> -No-confidence vote can be improved in order to provide real opportunities to the Parliament - Governmental approval of budget-related laws. - Better minority rights not implemented. <b>- Politicised Constitutional Court</b> Deadlocks in President's election. PSRM reduced the role of Parliament	<b>Direct President's election reinstated.</b> AEI government defined by coalition-building, unsustainable governmental changes and institutional deadlocks. <b>Constitutional Court politicized and adopts partial decisions 2019.</b>
fragmented national identity	<b>Political competition</b> Complex, fragmented party system, which allows defection and strengthened opposition Weakening elite due to the conflict, the Transnistrian elite (like the Armenian one) solidified its control of the institutions	<b>Increased political competition.</b> Two alternative drafts for parliamentary system are approved by the Constitutional Court and introduced in the Parliament. Special Committee formed by the Parliament, which eventually voted the new draft the 05 July.	<b>Deadblock and new elections 2000. The PCRM received "over 50% of the vote and 71% of the parliamentary seats"</b> (Roper, 2008: 122). Voronin became President with the unconditional support of the disciplined PCRM. Voronin was chair of the PCRM, which allowed him to centralise power through control of key positions This power concentration in the hands of the Communist party and the President	In spite of having only 19 MP, in 2015 the <b>PDM (Democratic Party) managed to gather a parliamentary majority with the support of "defectors from the Communist Party, the Liberal Democrats and one socialist"</b> Complaint filed by what PLDM saw as disloyal party defectors. The CC decision limited the access of two candidates to the presidency
	<b>Limited social participation</b>	<b>Just 1 year for drafting and adoption, in which four different drafts were produced.</b> Not an inclusive or participative process.	PCRM <b>is centralised and "is directed mainly by its party</b> and not by its voters" (Neukirch, 2001: 12). Use of private and state resources against opposition. Media censorship.	Increased media and political pluralism As a consequence of the theft of the century, social protests emerged. They dispersed due to Presidential elections
The EU focusing on Western Balkans	No specific EU engagement apart from the Partnership and Cooperation Agreement and TACIS funding.	Moore active role of the Venice commission in solving the constitutional crisis, true the suggestion of Joint Committee.	The Venice Commission concluded that "the balance of powers is preserved. Key recommendations were not adopted. – EU seen as a closer partner	The Venice Commission criticized the 2019 political decisions of the CC. Corruption scandals reduced EU popularity Differential empowerment
Russia has military and economic leverage.	1992 Russian blockade	Russia provides economic support after Lucinschi adopts power	Kozak Memorandum would give the secessionist regions veto power, which led to protests. Russia did not provide any significant concessions Worsening relations between Moldova, and Russia.	2019 co-habitation pro-EU government and pro-Russian President., support for EEU membership increased. Increased incentives after Dodon electi.

Table 8. Causal mechanisms in interinstitutional accountability Moldova 1999 - 2019

## **PART IV ELECTORAL ACCOUNTABILITY**

## ***X CHAPTER ARMENIA***

### ***I.I. INTRODUCTION TO THE REFORMS OF ELECTORAL ACCOUNTABILITY***

This chapter studies the recent reform processes in the field of Electoral Accountability. The reforms discussed are the 2016 amendment of the Armenian electoral code, and the 2016 Georgian Constitutional reform which in both cases led to the adoption of a proportional system. The 2017 Moldovan electoral code, on the other hand, shifted from a proportional to a mixed electoral system. While the reforms to proportional system in the Caucasus parallel the adoption of the parliamentary system, Moldova has reverted the proportional electoral trend which dominated its post-Soviet history. The evolution of these processes provides insight on the causal mechanisms of the reforms and their outcome.

The analysis provided in this chapter, illustrates the way in which the institutional design in the field of electoral accountability is instrumentally used by domestic elites for influencing the power balance through the control of key political positions. To a greater extent in comparison to Rule of Law and Inter-institutional accountability, electoral reforms illustrate that the main challenges to democratic deepening in the countries considered are those in the field of political competition - its personalist focus and the connections between the formal institutional structure and informal neopatrimonial networks.

Furthermore, this chapter illustrates how international actors have increased and deepened their influence in the shared neighbourhood, through differential empowerment of the diverse domestic actors that struggle for power. In addition, the geopolitical and geo-economic competition has a continuation in a normative clash on the empirical development of ideas as democracy and sovereignty, liberalism and conservatism. This normative clash was strengthened after events as the NATO intervention in Kosovo and the Colour Revolution. Consequently, Russia has adopted a mimicking strategy according to which it creates parallel instruments (as electoral observation) that challenge the legitimacy of Western-dominated organisations in democracy, as the OSCE/ODIHR. Furthermore, Russia uses the identity-based approach in engaging with social actors in the neighbourhood. The chapter firstly introduces the criteria for assessment of the reforms and subsequently studies the individual cases, providing conclusions on the implications of the reforms for freedom and equality.

### ***I.II. CRITERIA FOR ASSESSMENT OF THE REFORMS***

Electoral accountability focuses on the responsibility of governors to justify and to respond for their political decisions and refers to the periodical elections that give opportunity to the citizens to reward or punish the political representatives by voting for the candidates they support (Morlino, 2011). It can be described as vertical accountability, due to the unequal relations between governors and voters (O'Donnell, 1994a; Morlino, 2011). The assumption behind it is that citizens are “the only possible judges of their own needs” and are capable of evaluating “the responsibility of the government” in these terms (Morlino 2011: 199).

In addition, the provision of information and justification is an essential requirement for transparency and public debate within democratic institutions. Any “toothless or diminished forms of accountability” need to be prevented for the significant exercise of the citizens’ democratic rights and for guaranteeing “real restraints in power” (Schedler & Diamond 1999: 16). Electoral accountability is key for the social legitimacy of democratic institutions. Flawed elections that lack political consequences tend to reduce citizens’ trust in the political institutions, “undermine confidence in the electoral process and feelings of regime legitimacy” and increases the propensity to unconventional forms of social participation as street protests and riots (Norris 2014: 6). In relatively new and unstable democracies, such developments might lead to political instability, “undermining fragile gains in democratization, and triggering popular uprisings seeking regime change” (Norris 2014: 6).

Electoral accountability comprises the existence of “free, fair, recurrent and competitive” elections; freedom of party organisation and the “presence and stability of actual political alternatives” (Morlino 2011: 218). This combination of sub-dimensions is essential, due to their complementarity. Firstly, a key condition for holding free, fair, recurrent and competitive elections is the existence of equal rights of participation to all members of the community. Consequently, all citizens must have the legal right and the practical possibility to exercise it in equal conditions (Schedler 2002: 39). Secondly, the choice of electoral system is a fundamental decision for the political and the party system. Legislative and constitutional provisions on this aspect seek the fair aggregations of citizens’ preferences and their equality in the translation of votes into representative seats (Schedler, 2002). The following types of electoral system are used: Majoritarian (which includes the formulae of First-Past-The-Post, Second Ballot, the Bloc Vote, Single Non-Transferable Vote and the Alternative Vote System), combined (independent and dependent systems) and proportional models (Party lists and Single Transferable Vote systems) (Norris 2014).

The majoritarian system seeks the creation or reinforcement of an effective parliamentary majority and one-party government, “while simultaneously penalising small

parties, especially those with spatially dispersed support” (Norris 2004: 42). According to this electoral system, the country is divided in territorial constituencies, where electors vote for regional leaders. The systems that use a simple plurality rule are:

- The First-Past-The-Post according to which the candidate with most votes is elected in a single-member constituencies;
- The Single Non-Transferable Vote when voters elect through simple-plurality vote among different candidates from the same parties;
- The Cumulative Vote when citizens have as many votes as representatives and they can be cumulated on one candidate;
- The Limited Vote system uses a similar logic as the Cumulative vote, but the voters have fewer votes than candidates;
- The Bloc Vote where voters choose as many candidate as seats are required and they can choose among non-party members;

The systems based on the requirement of absolute majority are:

- The Second ballot system which requires an absolute majority of votes (at least 50%) for choosing a candidates. If this is not reached, a second election is held.
- Alternative Vote is when voters order the candidates according to their preference and the elected candidates reach absolute majority (Norris, 2004).

Majoritarian systems lead to winners-take-all elections and tend to make more difficult the access to representative institutions of smaller and spatially-dispersed parties. In addition, such electoral systems reinforce party dualism and the number of effective parties in Parliament is usually between 2 and 3. Therefore, the majoritarian model is suggested to “mitigate some of the problems experienced in countries suffering currently from the dangers of excessively unstable, undisciplined, and fragmented party competition” (Norris 2004: 255). Furthermore, majoritarian systems promote members’ identification with local priorities and networks, while strengthening “personalist over party appeals” (Norris 2004: 260). In order to maximise their success, most parties would adopt a “bridging” electoral strategy and catch-all campaigns that appeal to electors from diverse cleavages. Key question in majoritarian systems is the size and delineation of the constituencies, as malapportionment and gerrymandering respectively may lead to biased translation of electoral shares into parliamentary seats (Norris, 2004).

On the other hand, proportional electoral systems, prioritize the inclusion of different social factions in the legislative though the proportional translation of votes into seats. It involves greater need for coalition-building and bargaining after the elections and in the

parliament. Different formulas are used for calculating the seats corresponding to each party. With party lists are used: the highest average method, the formula d'Hondt, Sainte-Laguë, the modified Sainte-Laguë and the largest remainder methods. Another proportional method is the Single Transferable Vote according to which candidates are elected on the basis of the ranking of electors' preferences for a number of candidates put forward by the parties in multimember constituencies. Their inclusion in the parliament is subject to a minimum quota of votes. In addition, the threshold is key for the inclusion in the Parliament. It can range from 0.67% of the vote to 7%. The higher the threshold, the more difficult it is for small parties to be elected (Norris, 2004). In addition, the district magnitude and the inclusion of open or closed lists can potentially reduce or increase the proportionality of electoral system.

Unlike the majoritarian model, the proportional one leads to multiparty systems and “help[s] to overcome the dangers of unchanging one-party-predominant party systems, where voters cannot hold governors into account” (Norris 2004: 255). In addition, the proportional system strengthens social cleavages, as candidates can become members of the Parliament based on the support of a narrower social segment. Due to this outcome, parties would not have incentives to “broaden or moderate their electoral basis” (Norris 2004: 256). In addition, the identification of party members with their organisations and programmes is expected to be higher, in addition to a reduced personalist trend in politics. Such systems have been used in divided societies that require the effective inclusion of all social groups. These effects of the proportional system need to be analysed at the light of the “geography of electoral support” and “the number and depth of social cleavages” (Norris 2004: 254).

Lastly, the mixed electoral systems are defined by the combined use of proportional formulae and the election of majoritarian deputies from single-members districts. It is possible to distinguish between two types of mixed system. The proportional element in the combined dependent systems seeks to “compensate for any disproportionality produced” by the majoritarian component, through the distribution of seats in a way proportional to the share of party lists' votes (Norris 2004: 56). On the other side, the independent mixed system does not integrate such a compensating mechanism and is considered to be closer to the majoritarian system, than to the proportional one (Norris 2004).

In addition, the overall features of the election process need to be considered. Therefore, elections should be conceived as an “electoral cycle”, “as a sequential process” or as a “chain of democratic choice” (UNDP 2009; Norris 2004; Schedler 2002: 39). From this perspective, the consideration of the electoral day or only certain aspects of the legislation does not allow to reach relevant conclusions on how free, fair and competitive the elections are. Connectedly,

the lack of compliance with the rules at any stage leads to negative consequences for the electoral process and to violation of citizens' rights (UNDP, 2009; Norris, 2014). Given the deep consequences of the lack of effective electoral accountability and the interdependence of the different electoral stages, this research will consider the guarantees that the legal framework provides throughout the cycle (ACE, 2016). Therefore, the reform processes will take into consideration the reform process as such and, where possible, the implementation of the adopted legislation, including aspects as electoral campaign, observation, complaint and dispute resolution as well as independence of the electoral administration.

The existence of competition, actual political alternatives and participation are essential for a satisfactory exercise of electoral accountability. The freedom of party organisation and the "presence and stability of actual political alternatives" are the two sub-dimensions of electoral accountability that reflect this interdependence of the democratic dimensions (Morlino, 2011). From a legal perspective, no unreasonable limitations should be imposed upon any potential candidates for registration of political parties or for their participation. Furthermore, the presence of actual political alternatives beyond the incumbent party provides insight on possible electoral choice. Consequently, the actual possibilities for equal participation and organisation of all political parties throughout the entire electoral process are analysed. Equality needs to be guaranteed during the party registration, the electoral campaign (equal rights of funding and media presence), their access to the counting process, and the capacity to rise electoral disputes (GNDEM, 2012). According to the chain of democratic choice suggested by Schedler, the citizens must have the following freedoms guaranteed:

- Freedom of supply as they "must be free to form, join and support conflicting parties, candidates and policies" (Schedler 2002: 39);
- Freedom of demand as they "must be able to learn about available alternatives through access to alternative sources of information". This dimensions requires the fair and unrestricted access to media and campaign resources by the parties (Schedler 2002: 39).
- Given that the effective exercise of electoral accountability depends on citizens participation and political competition, it is essential to count with "well-established intermediary structures, such as parties and associations organizationally well-rooted [...] a responsible, vigilant political opposition, independent media that are conscious of their civil function, and a developed network of active, informed organisations and associations that share democratic values " (Morlino 2011: 206).

Connectedly, democratic institutions should not be “subject to or conditioned by non-elected parties or exponents of other external regimes” (Schmitter & Karl 1992: 45 quoted in Morlino, 2011: 30). Moreover, the implementation of free, fair and competitive elections requires the lawful management of the process by the public administration. The broad respect of the rule of law by citizens and institutions is essential in order to guarantee the equal and free right of choice. However, the redistributive implications of electoral accountability might lead to a more advantageous position for the incumbent, due to their power position and the possibility to use state resources in support of their personalist or party goals. The free expression of preferences, without coercion or corruption, as well as the correctly managed process of vote-counting and publication needs to guarantee equal rights to all citizens. In addition, the outcomes of the process of electoral accountability need to be implemented and imply an effective change or renewal of the term of the ruling elite. Lastly, in case of violation of the electoral rules, all citizens have the right to file complaints that are resolved by the corresponding public institutions (Schedler 2002: 39).

The different electoral systems and the requirements needed for the equal and free participation and competition of citizens in elections will be considered when studying the electoral accountability in Armenia, Georgia and Moldova. This field of research represents key challenges in terms of policy-making and is essential for the actual freedom and equality of the citizens. Firstly, elections are “situated at the intersection of state, political institutions and society”, illustrating “whether cultural attitudes allow the regime to easily and openly manipulate political institutions” (Nizhnikau, 2017a). Therefore, the study of the dominant dynamics in electoral accountability in combination with political competition and participation key insight regarding the democratic deepening and the internalisation of the electoral norms in the countries considered. In terms of norms application, electoral accountability is significant because “in hybrid regimes incumbents are not necessarily willing to comply [...] particularly in those areas that generate votes” (Bolkvadze, 2016: 6). Therefore, the analysis provided in this chapter touches on key aspects of democratic institutions.

Based on the requirements for free and fair elections described above, the electoral accountability reforms processes in Armenia, Georgia and Moldova will be analysed. For this purpose, the legal and institutional changes performed will be firstly discussed, and later the explanatory factors will be considered including the international dynamics, the domestic contextual factors and the trends of domestic competition and participation. Lastly, the implications of the reforms for citizens’ freedoms and equality will be considered.

## ***I. REFORM PROCESS IN ARMENIA***

The first Constitution of Armenia defined that the National Assembly was composed of 131 deputies: 75 majoritarian and 56 proportional seats with a 5% threshold (Defeis, 1995; Stefes, 2006a). The 2015 Constitutional amendment (discussed in Chapter VI) introduced a parliamentary model and a proportional electoral system and reduced the number of member of the Parliament to 101. In addition, run-off elections between the two main parties or coalitions could take place with the aim of building a “stable parliamentary majority” (Republic of Armenia 2015, Art. 89.3). The reason for the adoption of such requirement of a stable parliamentary majority was related to the much-needed domestic stability in the context of an insecure international environment of the Nagorno-Karabakh conflict. In the Constitutional Draft, the Article 89 of the Constitution limited the access to the second electoral round to the two front-runners. However, based on Venice Commission’s recommendations this aspect was left to be regulated in the Electoral Code (Galyan, 2015). Therefore, the Constitutional reform introduces a more pluralist framework in combination with certain majoritarian elements, like the change in the field of Inter-Constitutional Accountability (Chapter VI) (Partlett 2016: 90).

Subsequently, the reform process of the Electoral Code had to be developed in six months - between the Constitutional referendum which took place the 06 December 2015 and June 2016, given that the next parliamentary elections were planned to take place at the beginning of 2017. This was one of the first legal amendments that needed to be developed in a very short period of time after the adoption of the new Constitution (Republic of Armenia, 2015). A participatory process was initiated with the involvement of both opposition parties and civil society actors in the framework of the 4+4+4 negotiations between government, opposition and civil society. In addition, international organisations as the Venice Commission and OSCE/ODIHR played an important role in the drafting and negotiation, while the support of international donors as the EU, Germany and the USA, contributed to the policy implementation. The contributions of domestic and international actors will be analysed below.

Even though the new Electoral Code was adopted the 30 June 2016, some of its provisions were subsequently amended, due to domestic and international criticism. The development of the “stable parliamentary majority” in the Electoral Code led to a rather complicated electoral system, “whose effects represent a significant modification of the proportional system” (Venice Commission, 2016b: 8). It is a two-tier system in which the 101 MP are elected from a single national list and 13 district lists. The ballot is divided in a national list and an open district list, with the requirement that the district candidates are members of a party list. In addition, preferential votes can be given to party list candidates. Half of the seats

of each party are distributed by the method of the largest remainders among the partly-list votes and the other half is based on the district lists. This implies that the exact number of district MP is not defined on the basis of the election results. District candidates that obtain a seat are taken off the national list. The remaining seats are distributed to the parties in proportion to the votes using the D'Hondt method (Venice Commission, 2016b). A minimum threshold of 5% for parties and 7% for alliances is required, in spite of the Venice Commission recommendation to apply the same threshold to parties and coalitions (Venice Commission, 2016b).

The requirement of “stable parliamentary majority” is fixed at 54% of seats and in case a party or an alliance has a majority, but does not reach 54% of all seats, it will be assigned additional seats (OSCE/ODIHR, 2017b). Furthermore, if a party receives over two thirds of all seats, then the other parties receive additional seats in order to reach one third of all MPs. If a stable majority is not reached by a single party or coalition, new alliances can be negotiated in six days and if agreement is not reached, parties can agree on new alliances for a second round in five days. These two deadlines have been increased from three and two days respectively, due to the harsh domestic and international criticism for not being realistic. In addition, domestic and international observers underscored that the limitation to three parties (party alliances) for a coalition as an unnecessary hindrance to the process. This criticism was not addressed by the Armenian authorities as “they consider that such restrictions are essential in order to comply with the constitutional requirement of ‘stability’” (Venice Commission, 2016: 6). A second election round between the two main parties is held 28 days after the first one, in case no party/coalition reaches 54% of votes after the first round.

Another weakness identified by domestic actors was the deviation from a strictly proportional system, as the “open lists at the district level could potentially exacerbate the abuse of state resources and vote-buying at the local level” (OSCE/ODIHR, 2017: 6). This criticism was voiced by Edmon Marukyan, the leader of the opposition Bright Armenia, who claimed that the regional lists aim the continuation of the incumbent (News.am, 2016). This criticism regarding the regional lists, however remained a domestic concern (‘Independent Observer’ Public Alliance, 2017). The Venice Commission took note of this possibility of misuse of administrative resources, but acknowledged that this malpractice “may be fought by a range of means other than changing the electoral system” (Venice Commission, 2016b: 10).

A long-standing concern was the procedures of voters’ registration, identification, and the transparency and accessibility of the registration lists. CSO and opposition leaders requested the possibility for a consultation of the signed voters lists in order to avoid the “impersonation of voters leaving abroad” (Venice Commission, 2016a: 9). As a compromise

and a confidence-building measure, the last version of the Electoral Code included the possibility for consultation of the voters' lists to proxies, observers and media for 30 minutes. Furthermore, in November 2016 an additional measure for transparency was adopted – the scanned voters' lists would be published on the CEC website ('Independent Observer' Public Alliance, 2017; OSCE/ODIHR, 2017b). Information can be received from District Electoral Commissions on those that have voted by technical equipment. However, this measure was made conditional on receiving enough funds for its implementation. Eventually funding was provided by international donors including the EU, which allowed the electoral commissions to use Voters Authentication Devices and observers could confirm that the voters have not voted in more than one polling station (OSCE/ODIHR, 2017a). These developments in the field of voters' registration have been positively assessed.

The CEC members are selected by three fifths of all MPs and not by the President as before. However, in 2016 the Parliament re-appointed the same CEC members as before, which shows that the majority in the Parliament is aligned with the President. The re-appointment raised serious criticism from CSO, that pointed out that it "has failed its responsibility to properly organize and exercise supervision of elections" (Transparency International Anticorruption Center, 2016b). Therefore, the competition dynamics in selecting the management bodies confirm the conclusions underlined in the case of Inter-Constitutional Accountability. The consecutive super-majorities in the Parliament provide continuity and control of all the representative institutions and independent bodies by the Republican party.

Importantly, some of the weaknesses of the new Electoral Code reflect some long-term recommendation of international and domestic actors. For instance, the regulation of funding in the electoral code does not apply to all campaign-activities, but "only to specific campaign expenses" (Venice Commission, 2016a). This loophole allows inequality among candidates with diverse access to resources, as they might conceal their contribution to the campaign. This trend is reinforced by the five-time increase of the maximum amount allowed for campaign spending - 500-fold the minimum salary, without including "overhead, transportation", "rental of campaign offices and salary payments" (Grigoryan, 2016: 27). The sanction procedure for violation of campaign rules "remains unduly complex" and a prohibition of misuse of state resources is absent. The first draft included a prohibition of "abuse of freedom of mass media", which was removed after the Venice Commission criticism (Venice Commission, 2016a: 11).

The discussions of the reform process focused on observers' rights and the requirement of testing and certification of citizen observers introduced in 2011. The right of observation could be revoked due to "a violation of the requirements of this Code", which could be used

for minor violations. However, these conditions were softened as a reaction to domestic and international criticism. In the last draft of the Code this clause was deleted, while an additional condition for observers was the requirement to have included the goal of democracy and human right promotion in their charter for the last three years. At a later stage, this requirement was reduced to one year, which was still seen as an over-regulation that might prevent new organisations from observing. Furthermore, the requirement of testing and certification was replaced by a training of the observers and a code of conduct. On the other hand, observers can only file complaints only regarding violations of their individual rights, and “register their remarks in the registration book of the Commission”, while they cannot make recommendations to the Commission (Grigoryan, 2016: 38). The access to the procedure for filing complaints was also restricted to those being present in the electoral precinct. Therefore, the possibility to bring challenges remained narrow, given that different stakeholders have the right to challenge just specific aspects of the election process. Lastly, the presence of media and observers in the polling stations could be limited by the electoral commission in order to guarantee normal development of the electoral process. (Venice Commission, 2016a, 2016b).

As noted by international observers the Electoral Code was approved by a strong parliamentary majority of 101 and 102 on the two votings that took place the 30 June and the 20 October. However, this majority is representative of the parties which collaborated with the incumbent RPA. According to the Venice Commission and the OSCE/ODIHR, the main recommendations that were not adopted referred to the procedure for complaints and appeals, the campaigns finance transparency and accountability, the high electoral threshold for alliances and “proportionate sanctions for campaign-related offences” and a limitation on the number of observers (Venice Commission, 2016a; OSCE/ODIHR, 2017a: 6).

## ***II. IMPLEMENTATION OF THE REFORM***

The next Parliamentary elections in application of this system took place the 02 April 2017. In response to CSO and the opposition, and with the support of international actors the registration process was enhanced with special authentication devices. The voters’ lists were published and accessible for consultations. Both measures were positively assessed as deterrents for potential fraud and important trust-building measure (OSCE/ODIHR, 2017a).

Elections in Armenia since the beginning of the transition have been defined as “free, but not fair”, due to undemocratic practices as the ban on opposition parties, control of the media, pressure and intimidation of candidates and media, and the use of administrative resources by the governing party (Commission on Security and Cooperation in Europe, 1995;

Bigg, 2017). Such trends continued raising concerns regarding the actual capacity of the voters to cast their vote freely. Specifically, in 2016 the credible, proven and “widespread allegation of vote-buying, pressure on public servants including in schools and hospitals, and of intimidation of voters to vote for certain parties” raised serious doubts regarding the legitimacy of the elections (OSCE/ODIHR, 2017a: 3). The most notorious case was the documentation of the abuse of administrative resources provided by the CSO Union of Informed Citizens. Members of this organisation called 136 schools and kinder gardens, presenting themselves as RPA members, and asked for the lists of RPA voters. 114 directors of schools confirmed that they have compiled a list of voters. The longest list of potential RPA voters was of 1700 names. It was recognised intimidation was used as a method and one directors said he have “threatened by all means” (‘Independent Observer’ Public Alliance, 2017: 39). The recordings of the 114 school directors were published online. Interestingly, some of the lists had to submitted to the RPA, while others to a private company, which illustrates the degree to which private, party and public resources are used instrumentally for paternalistic goals. As a consequence, Daniel Ioanissian, from the Union of Informed Citizens was found guilty on numerous charges of defamation and “faces fines of up to 120.000 euros in damages” (European Endowment for Democracy, 2017). In addition personal information about him, that “could be leaked by the Police”, was published in media (European Endowment for Democracy, 2017).

In addition, OSCE/ODIHR observers also reported that pressure has been exerted by local authorities and public institutions on their employees for attending the RPA activities or voting for it, while a “private company owner threatened his employees that they would be fired” if they do not provide enough supporters to the RPA (OSCE/ODIHR, 2017a). This dynamic illustrates the lack of individual freedom of voters. In addition, it shows to what degree informal patrimonial processes parallel the legal regulation and institutional framework that are formally compliant with international standards. In such façade democracy, the coexistence of legal formality with the deviated implementation and use of the democratic processes for informal party goals, shows the way in which institutions can be devoid of content in terms of democratic practices, that are replaced by informal patrimonial practices. In such contexts, incumbent elite does not need to recur to open abuses of power, given that the formally democratic processes of legitimisation are used in their advantage. Furthermore, this dynamic is even strengthened by the prosecution of the CSO leader who made public the abuse. His prosecution contrasted with the continuity of the directors of the schools involved in the plot.

The limited role in the supervision of campaign funding and lack of independence of the Oversight and Audit Service (OAS) became obvious in 2017. The members of the OAS were appointed by the Parliament and its activities needed to be approved by the CEC. The procedure for its intervention was not clearly defined, while the limits of the campaign funding were open to the attribution of additional resources. These weaknesses of the legal and institutional development of the oversight function led to practical lack of any proactive intervention by the OAS. In addition, the media campaign confirmed the trend described in the previous chapter. Journalists reported self-censorship due to political pressure, while internet remained free of interference, giving space to independent and opposition forces.

The administration of complaints and appeals did not guarantee effective remedy. The complaints of abuse of administrative resources were not accepted, due to the lack of evidence of effective collection of lists of signatures. The prosecution set up a special group for the investigation of the 220 cases of vote-buying, of which only 38 cases were referred to the police and all of them were dismissed, due to lack of evidence. This lack of any significant outcome of the complaints, made obvious the “need of full and impartial consideration of the substance of the complaints” (OSCE/ODIHR, 2017a: 19). Given the possibility introduced in the Electoral Code, several international observer organisations were “officially refused an invitation”, because “there was already a high number of observers accredited” (OSCE/ODIHR, 2017a: 20). Among these organisations were the European Network of Election Monitoring Organizations and European Platform for Democratic Elections. Lastly, domestic CSO reported intimidation, obstruction and violence against opposition candidates, which was treated selectively by the police (‘Independent Observer’ Public Alliance, 2017).

As a result of the elections, the RPA received 49.15% of all votes, which translated in 55.23% of seats allocated, reaching the required stable majority. The RPA entered in coalition with the Armenian Revolutionary Federation (with 6.66% of seats). The Prosperous Armenia, which formally acted as an opposition, but collaborated with the RPA, received 27.36% of all votes and 29.52% of parliamentary seats. The fourth and opposition force was the Yelq bloc with 8.57% of all votes. This composition initiated the transition to a parliamentary system.

As described in Chapter VI, the nomination in 2018 of the former President Serzh Sargsyan as Prime Minister led to a peaceful revolution, which forced the change of political power to Nikol Pashinyan, the leader of Civil Contract, one of the members of the Yelq bloc. Under the pressure of massive protests, the government of Serzh Sargsyan resigned six days after its election. The new government led by Pashinyan was approved in the Parliament in May 2018 and new elections were planned for later 2018, given the lack of legitimacy of the

2017 elections. Interestingly, before the 2018 elections the new set up a Commission in charge of drafting new electoral reform, which was presided by Daniel Ioannisyan, the leader of the Union of Informed Citizens, who uncovered the system of controlled vote in 2017. Given that both Pashinyan and Ioannisyan had been subject to prosecution by the previous RPA government, such development illustrates the domestic struggle for power.

The main features of the new Electoral code drafted by Ioannisyan's Commission in 2019 was the adoption of the common proportional system without rating system. The threshold was reduced to 4% for parties and 6% for alliances, while the minimum number of political forces in the parliament regardless of the threshold would be 4, rather than 3 as before. The rules for campaigning were also changed, providing greater amount of public resources and media time. In addition, fraud as vote-buying was targeted by specific measures (Mshetsyan, 2018). However, given the short period before the December 2018 elections, this reform was not adopted in the Parliament. Ioannisyan criticised the government for prioritizing the elections as a means of legitimisation, rather than an opportunity for the adoption of consistent and meaningful reform (Grigoryan, 2018).

The December 2018 elections gave a majoritarian victory to My Step Alliance (88 MP). PAP continued as the second force with 26 deputies and Bright Armenia (former Yelq bloc member) secured 18 MP. Due to the loss of legitimacy of the former dominant parties, RPA and ARF, they did not pass the 5% electoral threshold, leading to short- to medium-term renovation of the political elite. The voting participation, however, decreased from 60.87% in the 2017 Parliamentary elections to 48.66% in the 2018 early elections (OSCE/ODIHR, 2017a, 2019c). This decrease might to a certain degree represents the abstention RPA supporters.

This chapter continues with the analysis of the explanatory factors of the electoral reform. Firstly, the contextual factors will be considered, followed by a consideration of the international dynamics. Thirdly, the trends of domestic competition and participation will be analysed, before the reform implications for citizens' freedom and equality. The consideration of these dynamics is relevant given that institutional reform obeys the logic of domestic actors.

### ***III. CONTEXTUAL FACTORS***

The power concentration in Armenia, based on the perceived need for a stable and united power vertical, is the most relevant contextual factor for the electoral accountability. The Nagorno-Karabakh conflict with Azerbaijan is perceived as an existential threat and it defines the political system in the country. This conflict took place between 1992 and 1994 and led to a continued economic embargo by Azerbaijan and Turkey. It implies constant vulnerability and led to the adoption of a reinforced semi-presidential system in 1995. The

stability-oriented leadership sought a strengthened executive with concentrated power in the hands of the President, who could act decisively in defence and foreign relations. Therefore, the state leadership in the 1990s and 2000s focused on building a stable presidential system with a Parliament controlled by the ruling party and its allied parties.

Such power centralisation was possible, due the high ethnic homogeneity of the country, as 94% of the Armenian population define themselves as Armenian Christians, which is reflected in a clear nationalist trend of all political parties (Stefes, 2006a; Way, 2009; UNDP, 2017). The origins of the democratic elite in the Nagorno-Karabakh liberation movement and the merge between Armenia's national-building process, its democracy movement and the Karabakh issue in late 1980 and early 1990s, facilitated the consolidation of an institutional system prone to power centralisation, which was controlled by the dominant Republican Party of Armenia for 20 years (1998 – 2018) (Rutland 1994; Way 2009).

In addition, since 2003 this centralization trend was additionally strengthened through coalition agreements between the majoritarian parties. The political competition is defined by surplus-majority governments composed of the 2 to 4 main parties of the system, and the creation of pseudo-parties. For instance, the Prosperous Armenia Party (PAP) is supported by the former president Kocharyan and is formally led by one of the wealthiest businessmen in Armenia, Gagik Tsarukian. PAP has adopted a flexible and supportive position towards the RPA's initiatives, in spite of officially being considered as an opposition (Morlino and Sadurski, 2010; Elgie and Moestrup, 2016). Besides, the opposition in Armenia was very weak and fragmented during the electoral reform described above. This trend is illustrated by the significant decrease of the number of effective parties in Armenia, which dropped from 5.19 in 2003 to 2.47 in 2017. This stabilisation of the Republican Party in Armenia indicates a dominant-party trend, which was paralleled by the isolation, fragmentation and loss of any possibility to influence the decision-making processes of the opposition.

The electoral system and practice have facilitated and reinforced power centralisation. In the beginning of its independence, Armenia adopted a mixed electoral system, where the National Assembly was composed of 131 deputies: 75 majoritarian and 56 proportional (Defeis, 1995; Stefes, 2006a). The dominant position of the RPA, which controlled the executive and legislative between 1998 and 2018, was also possible due to the electoral practice. Elections in Armenia have been defined as “free, but not fair”, due to the dominant undemocratic practices and the use of administrative resources (Commission on Security and Cooperation in Europe, 1995; Bigg, 2017). Therefore, electoral fraud also contributed to power centralisation (Colombier and Jaskiernia, 2005; Khachatryan, 2005).

The consolidation of the state power made possible also the adoption of increasingly authoritarian practices by the government. For instance, the Freedom House Index after 1994 remained between 4 and 5. Authoritarian measures were increasingly used in order to limit social protests and the outreach of the opposition forces. The transition Presidents (Ter-Petrosyan, Kocharyan and Sargsyan) have controlled or shutdown opposition media and parties. The government brutally suppressed the post-election protests in 1996, 2003 2008 and 2013 (Stefes, 2006a; Way, 2009; Iskandaryan, 2013; Bertelsmann Stiftung, 2016a; Gogia, 2017).

In summary, the political transition in Armenia has been defined by the Nagorno-Karabakh conflict, the ethnic and cultural homogeneity of the country, which made possible institutional centralisation and power concentration in the RPA. However, the adoption of the Constitutional reform in 2015 to certain degree reversed this institutional dynamic with the adoption of the parliamentary model and of the proportional electoral system. On the other side, the firm control of all key institutions by the RPA, was expected to allow it to retain and reproduce its control of the key institutions. However, two factors changed this dynamic.

Firstly, this period overlapped with the intensification of social protests. Importantly, this trend originated in the recurrent post-electoral protests, due to the low credibility of elections. Importantly, two periods can be differentiated. In the 2000s, the state's violation of human rights, freedom of speech, press and assembly led to a generalised sense of fear. Unlike Georgia, in Armenia, "after the election day, the interaction between social actors and the state [...]reinforced the regime strength rather than magnify its vulnerabilities" (Bunce et al. 2010: 188). In spite of the lack of political consequences of the protests, Armenian civil society managed to preserve "a space for civil participation and debate" (Ishkanian 2008: 42), and the 2008 social protests inspired a "fairly intense political activism and civic engagement that first emerged during the initial stage of the post-election crisis" (Konrad Adenauer Stiftung 2013: 13). For instance, during the 2008 state of emergency declared, digital media was the only source of independent or pro-opposition information. In 2012 and 2013 crowdsourcing initiatives contributed for organising election monitoring by citizens (Melikyan *et al.*, 2013).

As a result of this process, the 2010s witnessed the emergence of citizens' grassroots urban-based movements, organised around shared collective concerns on local level. These movements are "informal, volunteer based, horizontally structured, [...] loosely organised" and participatory and count more on street-based demonstrations and creative actions (Ishkanian 2014: 157). Between 2012 and 2018 these social movements gained power, based on their capacity to mobilise and inspire citizens to protest. The lack of a clearly structured organisation

or leadership led many observers to have very modest expectations regarding their actual possibilities to influence or revert the power consolidation of the RPA party or change of (Novikova, 2017). However, this activism was the basis for the Velvet Revolution in 2018.

Secondly, shortly after the adoption of the Constitutional reform, while the electoral code was drafted, the situation and the dynamics that had defined the Nagorno-Karabakh frozen conflict for two decades changed radically. For the last 10 years, the Nagorno-Karabakh conflict was a “low-intensity conflict, [...with...] phases of escalation, intensive violations of cease-fire, and periods of short-term truce” (Ter-Matevosyan, 2017: 3). The conflict-resolution negotiations in the OSCE Minsk group did not lead to any significant advances. In April 2016, the so called “four-day war” with Azerbaijan changed this dynamic, bringing the frozen conflict to “a new, much more serious combat phase” (Giragosian, 2017b). Azerbaijani forces incurred in territories controlled by Armenia, leading to 200 deaths, displacements of whole villages and the loss of 800 hectares of territory that until then was controlled by the Nagorno-Karabakh Republic Defence Army, changing the line of conflict (Novikova, 2017).

Apart from the human and military losses, the surprise “four-day war” had important consequences for the domestic social perceptions and policy-making. If before the conflict the unifying and centralising nationalist ideology of “one-nation-one culture” was successfully used by the governing elite with Nagorno-Karabakh origins, then after April 2016, they “lost the monopoly of manipulating the discourse of ‘national unity’” ( Andreatsyan *et al.*, 2018: 30; Novikova, 2017). For instance, during the crisis the then-President Serzh Sargsyan met with the first President Levon Ter-Petrosyan (at Petrosyan’s residence) to discuss the security situation and the Nagorno-Karabakh conflict negotiations (Armenpress.am, 2016). This confirmed that the Karabakh clan in the RPA was not capable of solving the conflict.

Secondly, the development of the conflict gave the impression of lack of preparedness of the Armenian Army, partly because the military operation was initiated by Azerbaijan. Besides, information regarding the lack of weapons and provisions of the Army accompanied the daily news regarding the conflict. Corruption scandals regarding the loss of provisions that were supposed to be sent to Army were reported (Mkrtchyan, 2018; Mejlumyan, 2019). In addition, a historic commander from the 1990s Karabakh war that was also the whistle-blower who reported the actual size of the lost territory, was arrested “for illegal possession of a weapon and for preparing to seize buildings and communication facilities” (Novikova, 2017: 9). As a reaction members of the Sasna Tser movement attacked a police station withholding hostages for several days in July 2017. As a result a series of protests were organised in Yerevan in the same period and they adopted slogans in support of Sasna Tser and for the resignation

of the government (Novikova, 2017: 9). This chain of events illustrates the contribution of the “four-day war” for the loss of legitimacy of the government.

In order to counter these negative effects, several key figures of the government were replaced in 2016 and 2017 by officials with clearly more technocratic profile. Shortly after the conflict, three high-level officials of the Ministry of Defence were fired for corruption, including the head of Intelligence and key procurement (Kucera, 2016). The National Security Council under the President was substantially renewed. Importantly, in September 2017 the Prime Minister resigned and he was replaced by Karen Karapetyan, the head of ArmRosGazprom and deputy CEO of Gazprom’s GAZP.MM Mezhrefiongaz unit (Novikova, 2017: 9). These changes in the government aimed to signal to the citizens the replacement of what was seen as the corrupt elite, by officials with more technocratic profile that would guarantee military and economic successes (Giragosian, 2017a; Novikova, 2017: 9).

The government also adopted the corresponding discursive and programmatic change, which was seen by domestic observers as smoke-screen for the 2017 elections. For instance, the idea of “nation-army” was used as an attempt to unite all citizens around the authorities and against the common enemy ( Andreyan *et al.*, 2018: 30; Novikova, 2017). The idea of “nation-army”, which was announced in October, essentially increased the nationalistic and security-orientation of the Education system. An increased number of events, trainings, camps and lectures were provided in the framework of the increased cooperation between the Ministry of Defence and Ministry of Education (Union of Informed Citizens, 2018). In addition, in November 2017 the compulsory conscription for High Education students was extended up to three years, while Saturday military became part of their training (Yevdokimova, 2018).

However, these measures aiming to renew the image of the Armenian government with more technocratic, modernising, at the same time as patriotic and nationalistic initiatives, clashed with the modern horizontal civic movements described above. The government had already lost the credibility of the citizens, who had gathered enough experience for self-organisation and resistance. This can be illustrated by the persistent advocacy of civil society organisations against the nation-army concept, which started in 2017 and in 2018 were supported in the framework of better organised civic protests that united both youth representatives from the Universities and formally-structured civil society organisations (Abrahamyan, 2017; Union of Informed Citizens, 2018; Yevdokimova, 2018).

In conclusion, under the pressure of the external threat for Armenia created due to its involvement in the Nagorno-Karabakh conflict, the 2000s dominated the inertia of power-concentration, centralisation and adoption of increasingly autocratic trends of government

through the suppression of social and political freedoms as the freedom of assembly and freedom of speech. On the other hand, the 2010 decade led to the development of significant capacities of better self-organisation, coordination and resistance by different civic actors as activists, independent journalists and formal civil society organisations, which successfully managed to exert pressure on the government. The discreditation and loss of trust in the government was strengthened by the weaknesses of 2016 military crisis management. Therefore, the so-known Karabakh clan in the government had lost the capacity to provide security. The government's strategy to deal with this legitimacy crisis through military, the patriotic and nationalistic education and technocratic renovation of the government were met by increasingly influential and coordinated social protests. Against this background, the election in April 2018 of the former President Serzh Sargsyan, as Prime Minister, in spite of his declarations of not running for this post, led to the Armenian Velvet Revolution.

#### ***IV. DOMESTIC COMPETITION AND PARTICIPATION***

Three different trends can be observed in the processes of domestic participation. Firstly, the Constitutional amendment between 2013 and 2015 (discussed in Chapter VI) was entrusted to a Commission of nine members attached to the Presidency. The affiliation network presented in Figure 19 below, shows that the most represented institutions in the experience of its members are the Presidency and the Academy of Sciences (5 members), followed by the Constitutional Court, the Parliament and the Yerevan State University (YSU) (4 members have belonged to each of these institutions). The Prosecutor General, the RPA and the German Development Agency GIZ are the following institutions in importance (3 members), while only two members held a position attached to Prime Minister. In addition, it shows the exclusion of political parties (apart from RPA), CSO and the limited involvement of Judicial institutions.

In this line the Constitutional reform was criticized for its closed, top-down and elite-based nature. The reform process was described as limited in terms of access and inclusivity of different social and political groups (Lovit, 2017). In addition, it was criticised for being elite- rather than public-driven, due to its low public participation (Apr Group, 2015; Novikova, 2017). Besides, the dynamics of party competition influenced negatively the parliamentary voting of the Constitutional amendment, which was adopted in Parliament by 104 deputies, only 10 MP voted against and three abstained (Protection of rights without borders, 2015).

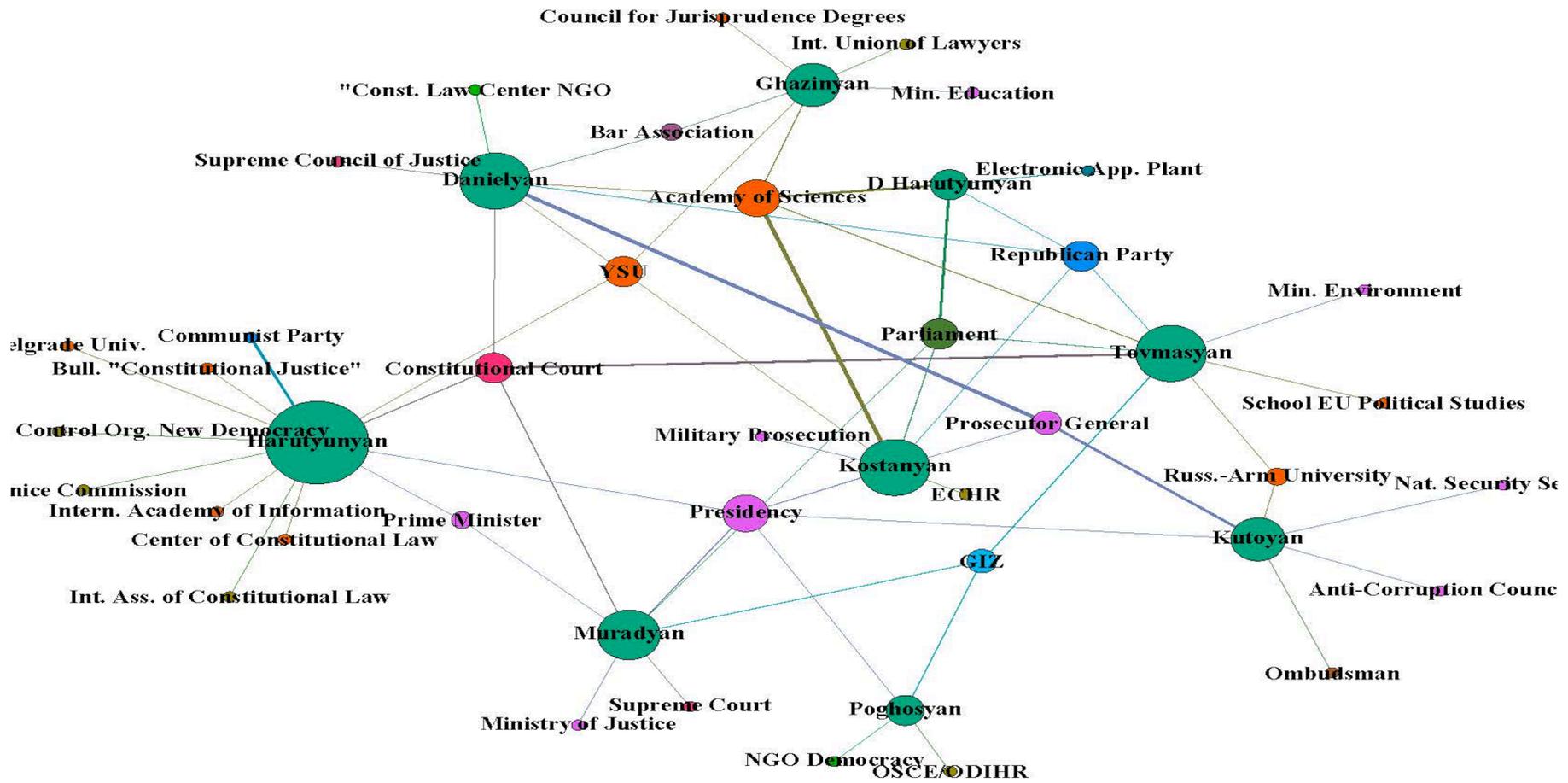


Figure 19. Affiliation network of members of the Constitutional Commission Armenia 2013 - 2015

Two PAP MP that abstained were dismissed from the party, due to the pressure on PAP deputies, that initially opposed the reform process (Movsisian, 2015). The new Constitution was adopted after 63,35% expressed their support in the referendum December 2015, with the electoral participation of 50,51% (OSCE/ODIHR, 2019).

The second trend of domestic participation refers to the amendment of the Electoral Code analysed here. The shift to a proportional electoral system was one of the key opposition demands. Shortly after the draft concept of Constitutional reform was presented to the President in April 2014, four opposition parties united and defined twelve key demands to be addressed in the framework of this reform. Among these demands one key aspect was the adoption of proportional electoral system for the 2017 parliamentary elections. The parties that signed this list of demands were the Armenian National Congress (led by the first President Ter-Petrosyan), the Heritage Party and two former coalition members of the RPA – the PAP and the Armenian Revolutionary Federation – Dashnakyutsun (Radio Free Europe, 2014).

Unlike the Constitutional amendment, the drafting process of the new Electoral code involved the participation of both opposition parties and civil society actors. It took place in the framework of the 4+4+4 negotiations between government, opposition and civil society. International organisations as the EU, Venice Commission and OSCE/ODIHR, influenced the choice of the negotiation format and some of the main concessions to civil society and opposition parties. After a long negotiations that were declared failed on several occasions, some the concessions to CSO's long-standing demands were achieved, e.g. the publication of the voters lists and the electronic identification of voters (Hambardzumyan, 2016; Union of Informed Citizens, 2016d). In addition, the recommendations of international organisations were used by domestic civil society and opposition actors for exerting pressure on the government, as they provided greater legitimacy and the guarantee of internationally recognised expertise (Union of Informed Citizens, 2016a).

However, a number of other issues were not taken into consideration by the government. In most of these aspects domestic and international actors overlapped in their criticism - as the limitations imposed on observers, the campaign funding regulation and transparency, the counting and tabulation procedure, as well as the management of complaints and appeals (Union of Informed Citizens, 2016b; Venice Commission, 2016a; OSCE/ODIHR, 2017a). However, the vote buying and its possible links with the regional lists, which eventually had the most distorting and delegitimizing effects on the electoral process, remained a concern only for domestic actors. The demand of holding of proportional elections with

national lists, rather than regional, was raised by the leader of the opposition Bright Armenia and a coalition of civil society organisations (News.am, 2016; Union of Informed Citizens, 2016c). Besides, the adoption of regional lists contradicted the goal of the Constitutional reform to strengthen the party system ('Independent Observer' Public Alliance, 2017).

Due to these differences, the civil society organisations participating in the 4+4+4 negotiations issued a statement claiming that the “consensus fell short by the government as a result of its absence of political will to improve the electoral system, breaking the rules of honest dialogue, and its uncompromising position in certain issues” (Transparency International Anticorruption Center, 2016a). In spite of this negative assessment, however, this reform was significantly more participative in comparison to the Constitutional amendment.

Interestingly, the increased participation in the reform process did not lead to a significant improvement of its outcome and consequently its implementation. The weaknesses of the 2017 parliamentary elections illustrated clearly the lack of freedom and equality between the different social and political actors. The proves of “the abuse of administrative resources” provided by domestic observers were not subject to “thorough and comprehensive examination” (Azatyan, 2017). The most significant case is the abuse of administrative resources with intimidation proven by the Union of Informed Citizens. The RPA exerted pressure on public and private employees for achieving the desired support. Such patrimonial connections affect negatively the equality between political actors and limits the free choice of citizens. In addition, this neopatrimonial system provides guarantees against prosecution to those directors of public institutions that provide support to the incumbent. On the other side, the director of Union of Informed Citizens was prosecuted and fined for investigating and reporting this abuse. Punishments and incentives in this governance system play a reversed role - norm-compliance is punished, instead of being rewarded, while breaking the norms in accordance with the expectations of the governing party is rewarded. Therefore, the logic of appropriateness is subordinate to the logic of consequences, according to which strengthening the power positions of the governing elite is rewarded, while weakening them is punished.

The third trend of participation is unconventional and gained force against the background of the loss of legitimacy of the Republican Party. Public polls have reflected the rise in citizens' support of nonconventional participation from 59% in 2008 to 72% in 2015 and 69% in 2017 (Caucasus Research Resource Center, 2018a). In addition, in 2014, 74.4% of all respondents thought that Armenia is developing in a fully wrong or mostly wrong direction, where the two reasons that most surveyed identified were the oligarchic system (60.2%) and

corruption (55.2%) (Apr Group, 2015). This public opinion combined with the emerging civic movements and a charismatic leader fed into the 2018 Velvet Revolution.

The nomination of Serzh Sargsyan as Prime Minister in April 2018 triggered a broad wave of domestic protests, given the loss of legitimacy of the corrupt RPA and its incapacity to provide security and economic growth. The protests became overwhelming as diverse social groups joined, i.e. 200 soldiers and representatives of the Church, in spite of the idea of “nation-army” (Reuters, 2018). A new government led by Nikol Pashinyan, the leader of the Civil Contract was approved by the Parliament in May 2018. This process led to the renovation of the political elite in Armenia, which represents the third trend of participation.

The drafting process of new electoral code before the December 2018 elections is analysed here in order to illustrate the third trend of participation in Armenia. The Commission in charge of drafting the reform was presided by Daniel Ioannisyanyan, the leader of the Union of Informed Citizens that uncovered the system of controlled vote developed by the RPA. This development illustrates the domestic struggle for power between the different elites, given that both Pashinyan and Ioannisyanyan had been subject to the prosecution the RPA government. Figure 20 and 21 below illustrate the professional background of the members of this Commission. Figure 20 is a simplified version in which only the nodes with links to more than one node are shown. This is a clearer illustration of the main actors’ professional background.

The two figures show a small affiliation network with dominant presence of civil society actors. More specifically, it shows that individual members with multiple connections to different organisations are dominant. This is why the purple nodes corresponding to the Commission’s members are the biggest. Almost all the members are or have been members of Parliament, which is the most represented institution in the affiliation network. It is followed by political actors as the Civic Contract (linked to Pashinyan), the Yelq Bloc and My Step. In addition, three connections are linked to Local Authorities and the Yerevan State University. Other institutional actors as the Central Electoral Commission, the Ministry of Justice, the Supreme Council, the Ministry of Territorial Administration and Development and Secondary Education are third with only two connections to individual members of the Commission.

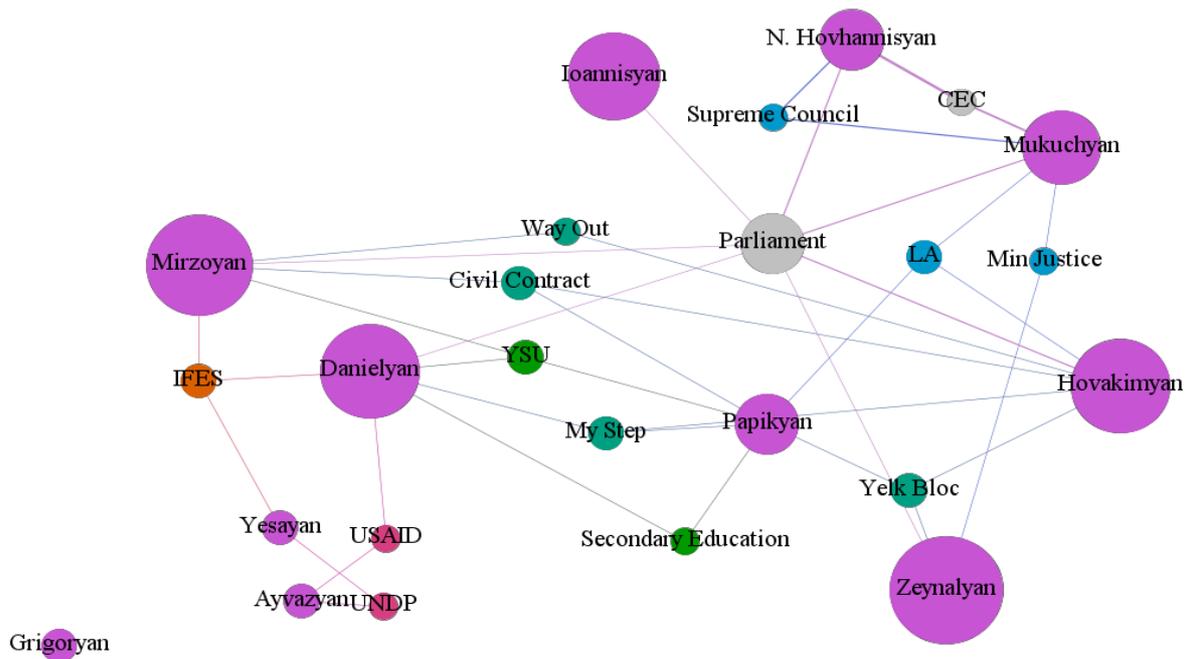


Figure 20. Reduced affiliation network of the Commission for the Electoral Reform Arm 2018

On the other side, Figure 21 shows that almost all actors have numerous connections to different civil society organisation, media outlets, international organisations or private companies. This background contrasts a lot with Figure 19 and represents the elite of the post-Revolutionary government, which to great extent is composed of representatives of the social movements that emerged in the last decade. Many members of My Step and Bright Armenia are former CSO employees and journalists (168hours, 2019a). The lack of any representatives linked to the Republican Party is also illustrative and relates to the lack of opposition parties in the Figure 19. Therefore, in 2018 Armenia’s political elite was renewed, i.e. 76.5% of all the MP are elected for the first time and the median age is 40 years (EVN Report, 2019).

Recent research on the dynamics of policy-making in Armenia has shown a clear sense of ownership of the process of social change, which is reflected in an increased trust in participation and policy-making. Secondly, the fluidity between civic actors and policy-making as key aspect in institutional turnover transforms the relationship between civil society and politicians, as they interact based on “networks of trust, including personal trust” (Andreasyan *et al.*, 2018). This network communication is a continuation of the dynamics that developed within the social movements that brought the Velvet Revolution. However, additional institutionalisation and formalisation of these relations between the governing elite and society actors is required for deepening the democratic development in Armenia.

In parallel, the RPA elite has adopted a discursive shift, that frames the Velvet

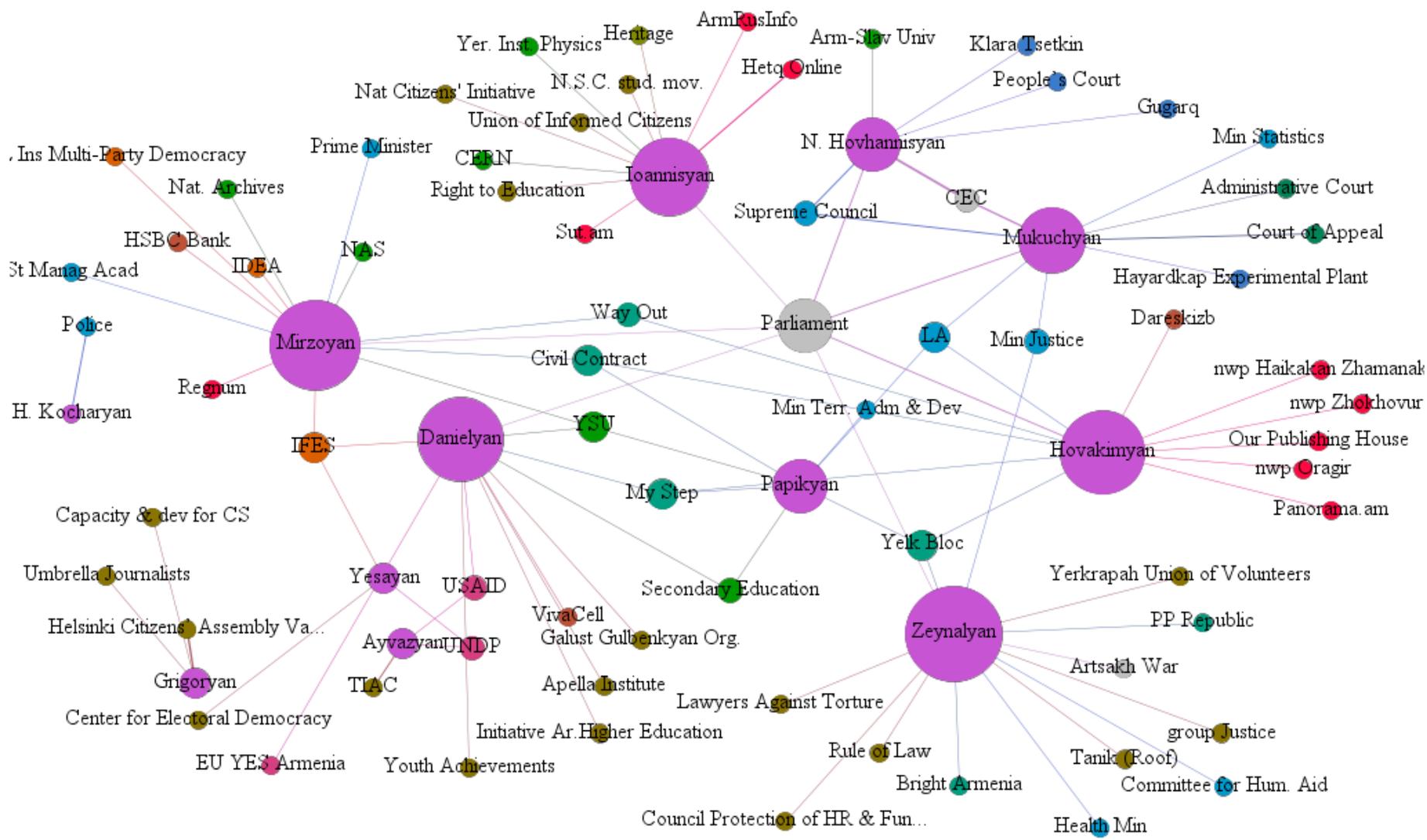


Figure 21. Complete affiliation network of the Commission for Reform of the Electoral Code Armenia 2018

Revolution as “part of the global movement against traditional elite” due to fatigue (Interview 55). Nikol Pashinyan is seen as a populist leader that does not plan strategically and does not follow the institutional path which requires a lot of efforts. Instead, he “prefer giving speeches and using an emotional discourse for its electors, but it’s not up to them to work in the institutions” (Interview 55). It is thus, interesting, that the Republican Party leadership recurs to narratives shared with Western countries in order to defend its position as the only custodian of institutional norms and democratic values as the Rule of Law. Such narrative was articulated by the second President Robert Kocharyan, who was detained and prosecuted for his participation in the suppression of the civil unrest after the 2008 elections. Kocharyan claimed that he is “an opposition politician, critical of Nikol Pashinyan’s unrestrained populism [...and...] a challenger capable of holding him accountable on the real problems Armenians care about – state governance, national security, and the economy” (Kocharyan, 2019). The publication of such claims in Euractive, an EU-focused newspaper, clearly shows the intentions of the RPA leadership to attract international attention on this narrative. Kocharyan has also recurred to other international platforms focused on Russia and Armenian diaspora in Russia.

Lastly, the Nagorno Karabakh conflict and the close relationship between the former RPA elite and the Karabakh government have also been used. For instance, Bako Sahakyan (the current President of Nagorno Karabakh) and Arkhadi Ghukasyan (the second President) have filed a letter of guarantee in order to advocate for changing the detention method (in prison) of the former President Kocharyan (Aravot, 2019). These close relationships between the RPA and the Nagorno Karabakh authorities has led to rumours and accusations by the new government of turning “Artsakh into a counterrevolution centre” (News.am, 2019).

In addition, other domestic groups frame the 2018 Revolution as a ‘colour revolution’ and claim that the traditional values of Armenia need to be protected from diverse negative influences. In 2018 two such conservative and traditional groups was established, i.e. Adekvat and Veto. These organisations have some overlapping membership and claim that they aim to defend traditional Armenian values from threats as LGTBQ advocates and George Soros. Veto organised demonstrations in front of the Open Society Foundations premises, claiming that the Revolution was a possible, due to the support of George Soros (Gevorgyan, 2019). Such claims are based on the recruitment of civil society actors in the government and national assembly. The same groups organised an attack against LGBTQ activists in August 2018.

In May 2019 Adekvat established a political party, to which Pashinyan reacted calling for law enforcement agencies to “strike a very strong counter-blow” as Adekvat “was preparing for violence” and its leaders were eventually detained a few days later (Kucera and Mejlumyan,

2019). However, this step increased the popularity of the group. In addition, the messages of this traditional groups are reproduced by media linked to the former government and its allies. For instance, TV5 “a network owned by a friend of former President Robert Kocharyan” and “Kentron a network controlled by Gagik Tsarukyan” the leader of PAP cover the acts and invite members of these organisations (Kucera and Mejlumyan, 2019). This dynamic increased the rumours and the suspicion regarding the links between the RPA regime and these conservative groups (Kucera and Mejlumyan, 2019; Gordon, 2020).

Connectedly, the use of media resources after the 2018 Revolution have continued working in support of the interests of the RPA and its coalition partners. Domestic media experts have pointed out that the representatives of the former regime have chosen the media as their main platform for expression. In addition, it is reported that the forces representing the pre-Revolutionary government undertake in this sense “a number of consolidated actions” that mainly aim to “bring to crisis the current government in power” (GalaTV, 2019).

In addition, groups as Adekvat and Veto imitate liberal actors. Different domestic actors as journalists, media experts and civil society organisations started checking, tracing and making public fake news. Against this background, “deceptive fact-checking groups” that are linked to members of Adekvat have adopted the name of AntiFake and claim to trace all the fake promises of Pashinyan (DFRLab, 2019). This trend is very interesting because conservative social groups occupy the civic space and debate with instruments borrowed from the repertoire of liberal civil society actors, for social and political goals against the ones promoted by liberal civil society organisations.

Such dynamic of politicised and polarised competition within civil society can be seen as an extreme case of transfer of the political struggle in the social domain. This struggle is referred to in social media as forces of the Revolution and Counterrevolution, which clearly illustrates the polarisation between domestic actors (The Armenian Mirror Spectator, 2018; News.am, 2019). In addition, these groups challenge liberal civil society in two ways. Firstly, they promote the interests of specific political options, which in the case of Armenia is valid also for liberal civil society. Therefore, there is high overlap between social groups and the political parties that struggle for power. Secondly, by imitating the instruments and the messages used by civil society, they create uncertainty regarding the information circulating the public space, challenging the existence, the values and the methods of civil society.

## ***V. INTERNATIONAL DYNAMICS***

The support of the European Union to the electoral reform influenced both its process and its outcomes. After the Constitutional referendum in 2015, the EU reiterated “the need to adopt a new Electoral Code, in line with OSCE/ODIHR recommendation, in an inclusive manner” (Lragir.am). In addition, the negotiation in the 4+4+4 framework was strongly promoted by international organisations. When Zurabyan, the head of opposition party Armenian National Congress, suggested this framework of negotiation he presented it as the “offer of the [...] OSCE/ODIHR to arrive at consensus over the draft Electoral Code and to adopt a format of political dialogue that would allow all political parties to reach a solution which would restore people’s trust” (ArmeniaNow.com, 2016). This international support for reaching a consensus was key for some of the positive legislative changes promoted by domestic civil society organisations. Domestic actors emphasized the key role of the EU conditionality in support of the 4+4+4 framework and of the measures promoted by civil society and opposition (Interview 62). This method of inclusive and participatory decision-making confirms the trend identified in the previous chapters and shows that the EU had an essential contribution to the participative process. The concessions to the demands of the civil society and opposition parties have been partially due to EU conditionality (Interview 62).

The statements of the head of EU Delegation in Yerevan show how conditionality was used. Before the elections he pointed that the deepening relations between the EU and Armenia are seen as an “incentive for the government of Armenia to ensure an election that is not marked by voter fraud, intimidation, and abuse of administrative resources” (Civilnet, 2017). In the same spirit, he noticed that “good elections mean new opportunities for cooperation with Europe, including monetary and project assistance” (Civilnet, 2017).

In addition, following the inclusive drafting process, the implementation of the electoral code was rewarded with substantial financial support by the EU and EU member states. The EU provided 7 million Euros in order to “close the identified financial gap and [...] allow for the smooth implementation of the electoral reform agreement” (Delegation of the European Union to Armenia, 2016). In addition, Germany, the United Kingdom contributed also to the electoral process, which together with EU support, represented 90% “of the overall the financial assistance to the electoral process” (Delegation of the European Union to Armenia, 2016). This financial support was part of a 2016 Programme for Public Administration Reform worth 20 million Euros, of which 12 million were designated for budget support (European Commission, 2016). It also included the UNDP-designed programme “Support to the Electoral Process in Armenia”, in the framework of which the “voter authentication devices and other IT equipment for the implementation of the [...] Electoral Code” (UNDP Armenia, 2016). These

improvements were positively assessed by domestic and international actors, as they allowed to check if citizens have voted in more than one polling station (OSCE/ODIHR, 2017a). These measures contributed to strengthen the reform process, to building trust between government, civil society and opposition and to improvement of the legal framework.

However, the electoral process did not significantly improve in terms of voters' freedom and equality. In spite of the improvements, international and domestic pressure did not achieve the adoption of the recommendations on key issues as complaints and appeals, the campaigns finance transparency, the high electoral threshold for alliances, "proportionate sanctions for campaign-related offences" and the limitation on the number of observers (Venice Commission, 2016a; OSCE/ODIHR, 2017a: 6). In addition, significant international financial support was provided by the EU before the elections. As a consequence the electoral code was implemented, but the regulation did not effectively prevent vote buying or pressure on voters. Consequently, the main challenge for the electoral freedom remained the "abuse of state resources and vote-buying at local level" (OSCE/ODIHR, 2017: 6). Such abuses are very difficult to register and to prevent. Secondly, only the leader of Bright Armenia noted the potentially distorting effects of the regional lists, which could facilitate the misuse of administrative resources at local level. Unfortunately, this remained a domestic concern, given that the Venice Commission considered that the electoral system is not the most appropriate means to tackle such practices (Venice Commission, 2016b: 10).

In addition, the system of controlled vote developed by the RPA included both abuse of power and of administrative resources, which were difficult to address and uncover by international actors. The support provided by EU funded organisation to the Union of Informed Citizens (UIC), that uncovered the corrupt system of controlled vote in municipal schools and kinder gardens, clearly illustrates the way in which the EU develops differential empowerment to specific domestic civic actors that address key issues for the accountability of the system (European Endowment for Democracy, 2017). Importantly, when domestic political challenges cannot be addressed by the EU or the recommendations of the EU (and other international actors) are ignored, the EU provides support to those domestic actors that tackle these challenges. The EU provides normative support (with official statements or with giving publicity to such organisations as the UIC) and also financial support in this field. Importantly, a week after the 2017 elections, a new grant scheme "Reinforcing Civil Society in Armenia" was announced by the head of the EU Delegation. It amounted a total of 1 million euros and focused on projects and sub-granting to smaller entities. Its goal was to "increase the role of

civil society” and “ensure reforms monitoring and public accountability in the areas that include EU-Armenia agreements” (Delegation of the European Union to Armenia, 2017a).

However, the 2017 elections did not lead to negative conditionality due to the reduced voters’ freedoms identified in the OSCE/ODIHR report. The EU noted the negative conclusions of the observation mission, and specifically the “vote-buying, and pressure on civil servants and employees of private companies” (Delegation of the European Union to Armenia, 2017b). However, instead of negative conditionality, this statement was followed by the confirmation of willingness “to strengthen our political dialogue and continue our support to economic and social reform including on the basis of the recently initialled [...] Comprehensive and Enhanced Partnership Agreement” (CEPA) (Delegation of the European Union to Armenia, 2017b). The CEPA was signed in November 2017, months after the elections.

Besides, it is important to remember that the EU financial assistance to Armenia for the period 2014 – 2017 was comparatively less than in the case of Georgia and Moldova. The Association partners Georgia and Moldova were expected to receive between 335 and 410 million Euros, while for Armenia were designated between 140 and a170 million Euros (Eastern Partnership: Civil Society Forum, 2014). This trend illustrates how the status of associated partner is translated in significantly more substantial financial support. Furthermore, after the 2018 Velvet Revolution, the signature of CEPA, and as a consequence of the pressure exerted by the Prime Minister Pashinyan the EU funding provided to Armenia increased from 34.5 Million Euros in 2017, to 46 Million Euros in 2018 and to 65 Million Euros in 2019 (European Commission, 2019c). This evolution of the funding shows that the change of government and the declared intentions to strengthen the democratic institutions and the CEPA, contributed for the increase in funding opportunities.

In particular, in 2018 the EU provided additional 7.050 million euros in support of “Deepening Democracy in Armenia” and it partially focused on “the support the credibility and transparency of National Assembly elections” that took place in December 2018 (European Commission, 2018: 3). This aspect is essential as “the credibility of elections becomes of vital importance to sustain and translate the wave of citizen uprising into legitimate results” (European Commission, 2018: 23). This component focused mainly on training of the electoral administration in Armenia, as well as the update of the voter authentication system before the 2018 parliamentary elections. The second component focused on Deepening Civic Engagement, as there is a “growing demand [...] to be engaged in political dialogue and governance processes beyond the electoral cycle”. Therefore, the EU will “help the government of Armenia to adopt a youth-oriented engagement approach on various levels of policy

implementation” (European Commission, 2018: 27). This second component focuses mainly on the creation of different spaces for participatory democracy, on the development of vibrant media environment and on strengthening women engagement.

In the case of the December 2018 elections the EU was “the largest single contributor providing support” in this field, with 1.5 million euros invested in technical and financial support and 0.9 million euros in civic participation (European Commission, 2019b: 3). Such a significant amount of funding illustrates an important support for the first democratic steps of the new government and civil society. International observers noticed significant improvement in raising awareness against electoral practices, as vote-buying and pressure on public employees. OSCE/ODIHR mission underscored that the political will “to discourage the selling and buying of votes was prevalent” and “stakeholders did not report systematic efforts of vote-buying or other electoral malfeasance” (OSCE/ODIHR, 2019c). In addition, the head of the EU delegation in Yerevan also expressed a very positive assessment of the 2018 elections stating that “they corresponded to international standards and that it is possible to say that they were the best in the independent history of Armenia”. In addition, he pointed that these elections will determine “the development of the political life in the country” (Aysor.am, 2019). Such positive assessments of the improvement in the management of the electoral process, contributed significantly for the legitimization of the new government.

In addition, the action of the EU in media environment deserves further attention, given that it is key aspect for electoral competition. In the 2010s improvements in the media environment provided space for civic protests, while online media proved to be a key channel for alternative and opposition. This trend continued with more successful strategies throughout the Velvet Revolution. After 2018, the EU has supported different civil society organisations that develop media literacy and train civil society organisations. In addition, direct and more flexible support to activists has been provided to domestic activists that were involved in the Revolution, as the student movement Restart, by the European Endowment for Democracy.

Another channel for support and legitimization used by political parties is the membership in European Party Families. The European People’s Party (EPP) is a long-term ally of the Republican Party. For instance, in 2015 the EPP Political Assembly recognised and condemned the Armenian Genocide and visited Armenia the 24 April for the commemoration of the Genocide (Eurasia Daily, 2015; European People’s Party, 2015). Interestingly, the EPP has continued supporting the RPA after the 2018 Revolution, in spite of its desaccreditation and the mass public protests. For instance, before the December 2018 elections the EPP “wished electoral success to the Republican Party of Armenia” and expressed its concern by “the

intolerant and hateful rhetoric and the political harassment of the opposition during the election campaign”, claiming that “[t]his has no place in a democratic society” (European People’s Party, 2018). Therefore, the EPP seems to accept the RPA as an example of democratic party, which may put into question its effective socialisation in democratic values. This reaction by the EPP leadership can be explained also with the framing by the RPA of the Velvet Revolution in context of the broader trend of increase of populist political parties.

In conclusion, the EU actions in the field of electoral accountability are based on conditionality, including differential empowerment (both financial and discursive), as well as socialisation (through training and inclusion in common activities in the field of democracy). Conditionality proved to be successful in exerting pressure on the RPA government for drafting the electoral code in a participative and open framework and for adopting key long-standing suggestions of the civil society. After such a successful influence, the EU provided increased funding for the support of the implementation of the new electoral code. However, this conditionality did not provide enough incentives for the RPA government to change key aspects in the legislation that affected negatively the electoral process and its outcome. In addition, informal practices of use of state resources, vote-buying and pressure on public employees affected in a very negative way the legitimacy and the outcome of the process. Socialisation did not influence change this reality, given that key recommendations of the Venice Commission were not included in the final draft of the electoral code.

On the contrary, socialisation and positive conditionality proved to be more successful in influencing the decision-making and implementation of the electoral process after the Revolution. Therefore, it can be concluded that the success of the international programmes depends eventually on the commitment and preferential fit of the policy adopted to the interests of the governing elite. The December 2018 elections were a key requirement for the legitimisation of “My Step” government. Consequently, compliance with international standards and counting on international support in this field was a key element in the foreign policy strategy of My Step elite. This dynamic complemented by the differential empowerment shows that the use of positive incentives with a reform-oriented elite is a successful strategy for the EU. Besides, it is important that the increase of positive incentives was sought by the post-Revolutionary government, which to a certain degree discursively entrapped the EU, claiming that more than public statements are required to show the acknowledgement of the advancement in the field of democracy. Therefore, the policy strategy described as more-for-more has created expectations in domestic reform-oriented elite, which was ready to claim for increased support when actual democratic change took place .

On the other hand, when studying the influence of international actors on domestic electoral accountability in Armenia, the competition between Western and Russian understanding of elections is a key aspect. Currently this divergence is manifested in the organisation of parallel observation missions that usually reach opposite and incompatible conclusions. The OSCE/ODIHR and the Venice Commission have developed highly institutionalised and structured way of cooperation and support of democratic norms and procedures in the field of electoral accountability. In addition, electoral observation missions are organised by the OSCE/ODIHR, the Council of Europe Parliamentary Assembly and the European Parliament. In parallel, the CIS also organises election observation missions, which as seen in Chapter VI reached the opposite conclusions regarding the referendum for the Constitutional amendment in 2015.

A brief comparison between the conclusions of the CIS and the statements and reports issued by the OSCE/ODIHR, the Venice Commission and the EU above will illustrate the different reporting on elections. The CIS electoral observation mission noticed in 2017 that the “electoral legislation corresponds to international standards and provides the basis for democratic elections” (CIS, 2017: 7). In addition, the report included a consideration of the compromise achieved between the government and the opposition in the drafting process of the Electoral Code. Unlike the OSCE/ODIHR report, the CIS mission concluded that “competition was guaranteed and voters were provided with a real electoral choice”, while “all parties were provided with equal conditions for the access to the campaign” (CIS, 2017: 7). The CIS report concluded that the elections “took place according to the national electoral legislation and international rights, [and] in the electoral process the citizens of Armenia were guaranteed the free expression of their will” (CIS, 2017: 8). These diverging conclusions from the OSCE/ODIHR report illustrate the different approaches towards elections.

On the other hand, it is relevant that the CIS observation mission of the December 2018 elections overlapped with the conclusions of the OECD/ODIHR. Both missions claimed that the citizens’ right of free choice was guaranteed (CIS, 2018; OSCE/ODIHR, 2019c). In spite of the adoption of overlapping assessments of the 2018 Parliamentary elections, the trend of positive assessments of the CIS, which are diagonally opposed to the OSCE/ODIHR observations was analysed in the case of the 2015 Constitutional referendum (Chapter VI) and the 2017 Parliamentary Elections. This trend expresses the competition between two incompatible conceptions of elections promoted by the EU and Russia. The election observation missions are the most structured form for exerting influence. This mechanism as relevant as such procedurally-focused efforts were not observed in the field of Rule of Law or

Inter-constitutional accountability. Therefore, it is possible to conclude that Russia's external influence focuses much more on the outcome of the domestic political struggle.

Russia's leverage in Armenia is its key resource. For this purpose it takes advantage of the long-term regional economic, energy and security dependency of Armenia on Russia. In spite of the positive assessment of Russia as a strategic partner of Armenia, its domestic perception was negatively affected by the development of close relations with Azerbaijan. In the summer of 2013, it was announced that "Russia agreed to deliver arms to Azerbaijan worth 4 billion Dollars", increasing Armenia's vulnerability (Makarychev, 2018: 11). After the 2016 "four-day-war" this announcement gained special relevance in Armenia, as Russia had closed trade deals for the acquisition of modern arms, while it acted as a strategic partner of Armenia.

In addition to the leverage model, it is important to consider the development of close links between social and political actors from Armenia and Russia. The RPA mobilised political parties and economic elites from Russia in support of Kocharyan's cause. Interestingly, the relations before the 2018 Revolution were established mainly at the elite level and it translated in political visits. The numerous Armenian diaspora in Russia also contributed for such elite relations. Consequently, when the 2018 Revolution brought new political elite to power, it also affected the level of trust between Armenia's new political elite and Russia.

Importantly, the shift in Pashinyan's perspective regarding Armenia's foreign policy after the 2018 Revolution is illustrative of this change. In spite of having been in the past an explicit supporter of deepening EU-Armenia relations, after the 2018 Revolution, Pashinyan made sure to communicate clearly that the Revolution is "an internal process", without foreign policy or geopolitical implication and that the "Armenian-Russian relations [...] are strategic" (Pashinyan, 2018). In addition, he clarified that when "considering the best interests of Armenia [...] drastic changes in foreign policy would be dangerous" (Pashinyan, 2018). As the protests evolved Pashinyan adopted a sovereignty-based discourse, claiming that he is not a pro-Western, nor pro-Russian, not pro-American – [but] a pro-Armenian politician" (Aravot.ru, 2018). Such claims were instrumental as they prevented social alarm and sent an unequivocal signal to Russia (Markedonov, 2018). As a reaction to this approach of Pashinyan, Kremlin's Press Secretary Dimitrii Peskov stated that "this is an exclusive internal question" and that Armenia is "our closest partner" (Russia Today, 2018). It is clear that a potential scenario of a perceived Colour Revolution, would imply significant complication of the relations with Russia and social-economic and military difficulties.

The relations between Armenian pre-Revolutionary elite and Moscow's political elite have long traditions, as illustrate the statements of some Duma deputies on trials of RPA

leaders responsible of the 2008 post-electoral violence. For instance, Konstantin Zatulin, the deputy President of the Duma State Committee for CIS Questions and Relations with the Compatriots, stated that Pashinyan has “destroyed his image of being a balanced, responsible and unbiased politician”, because he “pretentiously ignores the opinion of the Artsakh fight comrades of Kocharyan” (Aravot.ru, 2019). He also ignores the amical messages from Moscow, regarding Russia’s messages from Moscow, knowing that “Robert Kocharyan is among the closest friends of Vladimir Putin”. Also Russia’s positive relations with Kocharyan are “based on the assessment of everything that he has done for the development of the Armenian-Russian relations” (Aravot.ru, 2019). This aspect illustrates to what degree the relations between Russia and Armenia are influenced by personal trust between the leaders. Interestingly, after the Revolution, the diplomatic relations between Armenia and Russia intensified. For instance, from April 2018 until December 2019 Pashinyan has made 10 visits to Russia, while Putin visited Yerevan for the first time in December 2019, as part of the EEU summit that took place in this city. These notorious diplomatic efforts can be interpreted as a trust-building mechanism, given the rapid change of leadership in Armenia. At a later stage, Lavrov recognised that the foreign policy of the new government is balanced.

Significantly, after the interparliamentary meeting between the Russian Duma and the Armenian National Assembly, the representatives of the Prosperous Armenia Party were invited to the headquarters of the incumbent Yedinnaya Rossia for renewing their collaboration memorandum. Armenian media reported that the representatives of the party My Step were not invited for signing such an agreement, in spite of them being part of the delegation (Regnum.ru, 2019). In terms of leadership, the PAP is led by the oligarch Tsarukian who has close relations with Russia. Besides, it is illustrative that the last Prime Minister, Karen Karapetyan was the head of ArmRosGazprom and deputy CEO of Gazprom’s Mezhhregiongaz unit (Novikova, 2017: 9). This dynamic shows to what degree Russia’s political elite had built its relations through close personal, political and economic relations with Armenian elite.

For this reason, the 2018 change of government in Armenia required the establishment of closer links with the new political elite. An example of such efforts is the Lazarevsky Club founded in November 2018 “in the interest of a necessary dialogue, development and strengthening of the popular diplomacy in the benefit of the Armenian and Russian people” (Lazarevsky Club, 2018). Its goal was to understand what is happening in Armenia, to establish different way to contact with people” (Interview 14). Its first meeting in November 2018 focused on defence and security. In spite of stating that “we love Armenia independently of who is the president and who is in power”, no members of My Step attended the first two

meetings (Lazarevsky Club, 2018). On the other hand, some of the wealthiest representatives of the Russian-Armenian diaspora, as Komarov - the deputy director of RosAtom, and Al. Medvedev – the deputy director of Gazprom attended (Lazarevsky Club, 2020). This attendance confirms the central role of the economic leverage in the Russian-Armenian relations. Observers noted regarding the attendance of My Step – “of course, they will decide for themselves. The main economic investors in Armenia are there” (Interview 56).

The third meeting of the Lazarevsky Club focused on the “Media in Armenia and Russia – a Sincere dialogue”. Among the Armenian media representatives was the outlet Noev Kovcheg that collaborates with Russian media, the Institute of CIS countries and the Russian Union of Journalists. He partially discussed the *Russkiy Mir*, and its positions in Armenia. The president of the Russian Society for Friendship and Cooperation with Armenia, Kripuskov, underlined the importance of the “use of the ‘soft power’ as social diplomacy and media in its quality of an effective instrument for the development of the relations between the civil society in Russia and Armenia” (Lazarevsky Club, 2020).

Many organisations that promote people-to-people contacts in Russia comprise both political, economic, cultural elite and citizens. For instance, both Lazarevsky Club and CIS Countries’ Institute are directed by the Duma deputy Konstantin Zatulin. The Institute for CIS countries was founded in 1996 mainly by academic institutions with the goal of “studying the post-Soviet space and of socio-political accompanying of the foreign policy of the Russian Federation” (Институт Стран СНГ, 2015). This, however, illustrates the close links that exist between politics, economics, social and cultural interactions within these organisations. Notably, Kocharyan took part in the third meeting of Lazarevsky Club and Zatulin stated that the attack against him is shameful. In addition, Gegamyan, an RPA member, argued to the Lazarevsky Club that the current government “acts against Russia and, tries to “squeeze out Russia from Armenia”. He also claimed that “Western countries [have intentions] to control the region [...and...] that in Armenia there is patriotically-oriented media, that publishes these opinions, but it is not enough” (Lazarevsky Club, 2020). This relationship between patriotic groups and the interests of Russia illustrates why organisations as Veto and Adekvat are rumoured to be supported by Russia (Kucera and Mejlumyan, 2019; Gordon, 2020).

In summary, Republican elite uses the populist threat as a narrative presented to the EU, while with Russia it adopts ideas linked to colour revolutions supported by the West. These meetings of the Lazarevsky Club illustrate the main aspects of Russia’s external influence. In addition, security and economic links were the main leverages used by Russia in its relations with Armenia. These pressure is complemented by close linkages between economic, social

and political elite in organisations that aim people-to-people contact. Against this background, ideas as the Russian World, the exchange of journalists and the cultures play a central role.

The idea of Russian world has been incorporated to Russia's geopolitical ideology as the basis for the projection of the above ideas in Russia's immediate neighbourhood and a policy towards Russian compatriots (those "who live abroad and are linked to the peoples historically residing on Russian Federation territory") (Russian Federation 1999, Art. 1). In addition, the Russian Orthodox Church (ROC) has a leading role in the protection of 'traditional spiritual-moral values' and the development of national identity, as well as the basis for external influence in the Russian World (Laruelle, 2015).

Against this background, it is also interesting to observe the opposition between national values and democratic liberalism and its use in domestic political struggles in Armenia. The alignment between the conservative Russian discourse and the accusations of the RPA and other 'patriotic' groups' against the My Step contributes to the domestic perception of the possible linkage between them. This aspect relates to the identity change, which is seen to be promoted by Western actors, with which My Step is identified domestically. Therefore, Armenian national values are linked in the domestic imaginary with ideas as traditional family as essential source of Armenian culture, while Western influence relates to tolerance and gender equality, including LGBT rights. In this sense, it is interesting that in a TV programme before the December 2018 elections, the RPA representative Vigen Sargsyan asked Nikol Pashinyan if he thinks he has obligations to LGTB members of My Step foundation "for doing fundraising for [his] benefit" and also asked him what "is more important: national values or democratic liberalism?" (Analytical Centre on Globalization and Regional, 2019).

In this way, two opposed fronts in the domestic discourse can be clearly identified. On one side, progressive liberal civil society, linked with the current government is accused of promoting Western liberal values, in opposition the Armenian national interests, traditional values, as well as the interests if Russia. International organisations as the EU and the Council of Europe that promote gender equality, including LGTB rights. On the other side, Russia defends traditional conservative values and domestically emerged nationalistic groups which also support the protection of traditional values (Melikian, 2019).

In conclusion, Russia's influence in the field of Electoral Accountability and competition illustrates a combination of realist geopolitical considerations and their identity-based interpretation, in addition to procedural norm diffusion. Electoral observation missions are an expression of the competition for development of democratic norms. On the other hand, people-to-people relations, media, as well as support for conservative values show an effort to

establish links with the post-Revolution reality. This dynamic shows a realisation of the importance of social linkages, in addition to the very effective leverage used by Russia. Also Russia has perceived the need to strengthen its relations beyond the RPA elite. Unlike the EU, Russia, when using linkage, combines it with different actors – economic elite, politicians, academics and media experts, increasing in this way the pressure of its leverage.

Russia's approach towards domestic actors also shows a different understanding of identity, democracy and sovereignty, collective and individual rights. These elements influence the dynamics of political competition and consequently the outcome of the elections. The RPA and nationalist elite accuse progressive liberal actors for attacking Armenian traditional values and for vulnerating the geopolitical interests of Russia in the region. There is a continuity between domestic and international discourses in Armenia, in spite of the impossibility to identify direct links between international and domestic actors. This aspect also leads to increased polarisation of discourses and competition. The involvement in politics of nationalistic and even radical groups which recur to physical attacks is an expression of such polarisation of the domestic environment.

On the other side, the EU is identified with the defence of liberal values as equality and tolerance. For instance, it advocated for the full adoption of the Istanbul Convention and supports the improvement of civil society and media environment in the country, through differential empowerment of domestic actors and training in media literacy in order to prevent the negative effects of fake news. In addition, the EU increases funding and incentives for democratisation. In conclusion, this trend of promotion between two incompatible conceptions of elections promoted by the EU and Russia, is the main trend of international that was not present in the field of Rule of Law not Interinstitutional Accountability. In addition, the competition between progressive EU-aligned and conservative sectors closer to Russia's discourses, directly influences domestic competition and electoral outcome in Armenia. It is, thus, possible to argue that the main point of influence is the electoral process. Electoral rules and outcomes constitute the main field of competition between the EU and Russia.

## ***VI. IMPLICATIONS FOR FREEDOM AND EQUALITY ARMENIA***

The analysis of the reform process in Electoral accountability in Armenia shows several relevant dynamics. It is possible to conclude that the reform at constitutional and legal level remains very different from its practical implementation and the actual possibilities for the citizens to exercise their rights. The main reason for this legal-implementation gap is the lack of effective Rule of Law. There is no correspondence between the declared intentions of the

legal reform and its implementation and translation in citizens' rights. In spite of the criticism of the Venice Commission to specific aspects, the change to proportional system was positively assessed. Domestic actors on the other side, even if initially they supported the declared purpose and direction of the reform, they eventually opposed the reform, as they realised the limitations of its implementation. In such controversial situations, international actors focus on the empowerment of individual domestic actors.

The development of parallel informal system for controlled vote, manifests how consolidated was the power structure of the Republican party in Armenia based on the control of key local positions. This fraud is very difficult to address for international actors, while domestic actors face challenges posed by the state apparatus against them. Therefore, the 2017 elections showed that the main purpose of electoral accountability, as an effective way to evaluate and make accountable the government for its political decisions, was not fulfilled. Instead, elections were used as a tool for controlling political institutions, for retaining power positions and led to additional power centralisation. Therefore, in 2017 electoral accountability was flawed, as it was deprived of any political consequences and did not represent any restraint for the political power. These flaws reduced the already low legitimacy of key democratic institutions and eventually led to the 2018 Velvet Revolution. The reduced trust in democratic institution and in the effectiveness of political accountability, led to significant increase in unconventional participation as means to influence political decision-making.

It is possible to conclude that the Rule of Law weaknesses implied significant limitations in the substantive dimensions of freedom and equality. Citizens' political rights of free vote and to choose government were vulnerated through the sophisticated system of controlled vote developed by the RPA. Not only the state did not provide sufficient guarantees for free elections, but public institutions were used as a mechanism to put pressure on citizens, leaving them devoid of content in terms of democratic practices. In this task the use of the state apparatus for party goals has been complemented by the open cooperation of private companies. In this context, open and straightforward legal limitations of political competition are not required, given that the same outcome in terms of strong party positions can be achieved without adopting undemocratic legislation. How toothless was electoral accountability was illustrated by the lack of investigation of the most significant electoral complaints, while civil society members were prosecuted for investigating the electoral fraud.

This *façade* democracy also affected negatively the equality between political candidates in Armenia, given that both private and public actors informally supported one side. This lack of equality lies in the intersection of two procedural qualities of democracy.

Competitive elections with equal opportunities are a precondition for effective political competition and for electoral accountability. However, when the state apparatus and private enterprises cooperate with the RPA, they give it a significant advantage in comparison to other political parties that have not been in the government for the last 20 years. Furthermore, the more advantageous position for the RPA included better access to media space and more financial resources for its campaign. Importantly, the weaknesses in the legislation regulating the campaign finances were identified by the Venice Commission and the OSCE. However, the recommendations of these international organisations were not addressed by the RPA government. Even if the international support led to significant legal improvements regarding voters' registration and electoral observation, the weaknesses in the funding regulation and control mechanisms remain, showing that this is a key field for the incumbent's power position.

The adoption of proportional model was the most fundamental change resulting from the reform. As was described above, the proportional system “help[s] to overcome the dangers of unchanging one-party-predominant party systems, where voters cannot hold governors into account” (Norris 2004: 255). In addition, it strengthens the party system, as it reduces its personalist trends and strengthens the members' identification with the party. These two consequences of the proportional system were expected to counter exactly these weaknesses of the Armenian political system – the one-party dominant party system and the weak and personalist political parties. However, the introduction of regional element in the electoral system still allowed to effectively control the elections and voters' behaviour.

The high threshold and the requirement for stable majority were adopted in order preventing possible over-fragmentation of the parliamentary representation. Interestingly, none of the two parliamentary elections that took place after the adoption of this legislation, in 2017 and in 2018, led to any significant fragmentation. On the contrary, the two elections produced very similar outcome in terms of number and distribution of political parties. The only and most significant change is that the 2018 elections led to almost complete renewal of the political elite. My Step and Bright Armenia became dominant, at the expense of the RPA and RFA that did not pass the threshold. Therefore, the personalist and dominant trends of competition continue to produce the same sur-plus majorities, showing that the weak party development is another element that prevents the country from deepening in its democratic development.

In conclusion, party competition, together with Rule of Law, prove to be the most relevant dimensions that shape the practical development of electoral accountability and citizens' rights. In addition, sur-plus majorities as a recurrent outcome of the elections, lead to the isolation of the opposition political elite without access to key institutions and nominations,

reducing the potential for negotiation between parties. Key elected and independent institutions are seen as representative of the incumbent or the opposition, leading to their politicisation. This was the case of the Constitutional and Supreme Court. This circumstance leads to increased polarisation and higher level of conflict between the actual political alternatives. The impossibility of negotiation between RPA and My Step elite is highlighted by the fact that when in government they have prosecuted and imprisoned key members of the respective opposition force. This polarisation is an additional challenge for the Rule of Law, for achieving more representative institutions and for reducing the polarisation.

### ***VII. CONCLUSIONS ON ARMENIA***

The above analysis of the reform process shows several key dynamics for the Electoral accountability in Armenia. Table 1 below summarizes the evolution and dynamics of the reform process. The first conclusion is that the two key aspects that influence the processes of electoral accountability depend on the existence of effective Rule of Law in the country and on the domestic trends of competition. Therefore, the lack of effective Rule of Law in Armenia left the positive change to proportional system, completely devoid of its actual content and *raison d'être*, due to a sophisticated system of controlled vote. Secondly, the dynamics of domestic party competition pre-defined a continuation of the dominant sur-plus majority representation, that survived the change to proportional system and the complete renewal of the political elite in the Parliament. This dominant party system leads to increased polarisation and opposition of the political dynamics in Armenia. Instead of making possible consensual decision-making, such system, strengthens the bipolar struggle for domination of both representative and independent institutions, as the Constitutional and the Supreme Court.

In addition, the prolonged government of the RPA, together with the Nagorno Karabakh losses as a consequence of the 2016 Four-day war, led to the loss of legitimacy of the leadership of the Republican party. The lack of inclusivity and possibility to effectively participate and influence decision-making processes via the democratic institutions, together with the increased possibilities for coordination of social movements, led to the perception that street protests are effective and legitimate means to achieve opposition's political goals. In addition, the corruption and ineffectiveness in managing the conflict escalation in 2016 in Nagorno Karabakh, deprived the RPA leadership of its monopoly of national security narratives and of its legitimacy as the only capable actor in the field of national defence. This combination eventually led to the 2018 Velvet Revolution, which was triggered by Sargsyan's election as Prime Minister, breaking in this way his promise not to run for this post. This loss of legitimacy

led to the complete renewal of the political elite in the Parliament, and to the impossibility of the RPA to pass the 5% threshold in the 2018 elections.

When studying the international dynamics it is interesting to note that electoral competition is the only field in which the EU and Russia have developed parallel monitoring mechanisms that compete for reporting on the level of norm compliance. Through this normative competition, the CIS monitoring legitimises domestic elections that have been criticised by the OECD. In addition, the high level of linkages and connections between domestic social and political actors on one side and the EU and Russia on the other play an important role in the field of electoral accountability. These linkages become more obvious and important as international actors discursively support specific domestic entities, while internal actors seek international support recurring to relevant political, cultural and geopolitical discourses.

Therefore, the EU provides financial support to critical social organisations and movements that eventually uncover the violations of political institutions. Since 2018 the EU has increased its funding for social participation and for open media environment, which contributes to the development of critical and pro-democratic organisations and movements. On the other hand, throughout the years the main European Political Family – the EPP, has developed close links with the RPA. As a consequence the EPP continues legitimating RPA through its supportive statements, while neglecting the violations perpetrated during its government. In addition, the RPA has resorted to the use of anti-populist discourse for explaining its current situation in Armenia and appealing for support from EU institutions.

Russia, on the other hand, had developed close links with the RPA and PAP elite in the last twenty years, including on personal level between the highest political figures. The 2018 Revolution brought an inevitable change in the leadership of Armenia, and Russia showed significant efforts to open new platforms for communication and linkage with the new political elite of My Step. In such platforms, Russia replicates the model of inclusion of the main representatives of the economic, political, social and media elite interested in creating such linkages. This model illustrates the interdependence between the different fields in the relations that Russia develops with Armenia. Russian representatives used such platforms for supporting their close contacts in Armenia as was the case of Robert Kocharyan.

On the other hand, RPA leadership describes the 2018 Revolution as a Colour Revolution and a step towards the destruction of Armenian national identity. This illustrates how RPA adapts its discourse and exploits the regional geopolitical, political cultural narratives according to its communication with Russia or with the EU. Furthermore, domestic

conservative groups and media acting in opposition to My Step elite, seem to align with RPA and pro-Russian discourses, increasing domestic rumours for their interconnections. The active involvement of such conservative groups in policy-making are a relative new phenomenon in Armenia. They take advantage of liberal spaces and mimic civil society *modus operandi* in support of conservative and illiberal goals.

Lastly, it is important that the use of leverage in the case of the EU and Russia in the considered period has been limited in terms of electoral accountability and competition. The EU also used conditionality regarding the electoral reform process, which led to increases citizen participation, and certain political concessions. However, this conditionality was not effective in preventing the 2017 flawed elections. After these election the EU failed to use negative conditionality and signed the CEPA agreement a few months after the elections. Interestingly, Pashinyan effectively entrapped and forced the EU to increase its funding for Armenia in order to show clear support to the 2018 pro-democratic change. In this way, Pashinyan effectively used the ‘more-for-more’ principle of the EU support in order to argue the need for increased financial support of My Step government and as a recognition of its achievements and convictions in the field of democracy. On the other hand, Russia’s image was negatively affected by the fact that it was selling arms to Azerbaijan. However, its great economic and military leverage in Armenia was effectively used to influence the geopolitical choice of Armenia in benefit of the EEU membership. In addition, the importance of these regional interdependencies between Armenia and Russia led to the reorientation of the personal geopolitical preferences of Pashinyan. This acknowledgement of Russia’s role in Armenia’s foreign policy is the reason for the early and repeated declarations that the 2018 Revolution does not imply any change of geopolitical reorientation.

Independent variable	Contextual propositions 2012 - 2015	Causal propositions 2015 - 2020	Outcome (institutions)
State existence threatened by external conflict	<b>Mixed electoral system</b> “Free, but not fair” elections with undemocratic practices and the use of administrative resources	Proportional electoral system adopted with concessions to CSO and IO.	2018 elections without vote-buying legitimize My Step
	<b>Losses in and weak management of the 2016 “four-day war”</b>	But 2017 elections with proved vote-buying and controlled vote.	New electoral code drafted by new elite
High Ethnic homogeneity	<b>Dominant political competition</b> Corrupt dominant party supported by fake or weak opposition. Sur-plus majority governments Isolated, fragmented opposition –Nationalist parties.	<b>RPA elite loses the monopoly of the ‘national unity’ discourse and its legitimacy.</b>  Sargsyan as PM in 2018 triggers social protest	Pashinyan charismatic leader with surplus majority and very limited capacities of the opposition  RPA adopts anti-populist discourse
Digital media	<b>Increase in unconventional social participation,</b> Recurrent post-electoral protests Crowd-sourcing and digital media for electoral observation Informal, volunteer based, horizontally structured social movements	CSO, opposition and IO take part in the reform.  <b>2018 Velvet Revolution</b>	<b>Renewal of the political elite</b> with increased trust between civil society and the new generation of politicians.  <b>RPA and nationalist groups</b> frame it as Color revolution against Armenian Values
EaP created, AA/DCFTA negotiations	<b>AA/DCFTA negotiations</b> concluded in 2013.  IO support CSOs demands and participation in the reform process.  EPP supports RPA	<b>Ex-ante conditionality in support of participatory process</b> and specific improvements in the electoral legislations <b>CEPA signed November 2017 – no negative conditionality</b>  <b>Differential empowerment funding to Union of Informed Citizens</b> and normative support	The EU-Armenia cooperation <b>increases and focuses on democracy, media and participation</b>
Economic and military dependence on Russia	<b>2013 Russia pressure for EEU integration</b>	CIS observation mission legitimized the elections in 2017 and also in 2018	Russia considers it is domestic issue  Efforts for <b>contact with the new elite.</b> <b>Differential empowerment RPA, PAP</b>

Table 9. Reform process of electoral accountability in Armenia.

## ***XI CHAPTER GEORGIA***

### ***I. REFORM PROCESS IN GEORGIA***

The electoral system in Georgia has also remained mixed for most of its independence, being subject to great controversy due to the pressure exerted by different actors in support of a fully proportional system. Until 2017, 77 members of the Parliament were elected with a proportional system and 73 with majoritarian system with 5% electoral threshold (Stefes, 2006a; Christofer Berglund, 2014; Tatanashvili, 2016; Parliament of the Republic of Georgia, 2017). The electoral reform process to proportional system analysed here is part of the Constitutional reform that was adopted in 2017. However, its legal development lasted until the first months of 2020, as it was subject to detailed and controversial review.

The discussions on the electoral reform began in 2015 and it was formally adopted in 2017 by the Georgian Dream majority, entering in force 2018. This Constitutional reform replaced the direct presidential elections with parliamentary designation and the electoral system shifted from mixed to fully proportional (Ruthrauff, 2017a). However, according to the initial text adopted the fully proportional system would not be applied for the following parliamentary elections that are to take place in 2020, but only for the 2024 parliamentary elections. This provision was changed after thorough negotiations in 2020. In addition, for the 2024 parliamentary elections no electoral blocs could be formed, and the electoral threshold would be raised to 5%. These two conditions have been criticised for reducing the competition and the actual possibilities for different political parties to be represented in the Parliament. For instance, the 5% threshold allowed only three political parties to become members of the 2016 composition of the Parliament. Due to harsh domestic and international criticism on the delay of the adoption of the fully proportional system and for continuing the use of the mixed electoral system in the 2020 elections, the threshold for these specific elections was reduced to 3% and coalition blocks were allowed to run (Ruthrauff, 2017a).

The way in which the reform process developed clearly proves that electoral accountability is at the centre of the political competition in Georgia. The need of electoral reform to a fully proportional system was an issue that had gained central importance in the Georgian context before the 2016 Constitutional reform (see contextual factors). As a consequence, among the 2016 electoral promises and in the programme of the Georgian Dream – Democratic Georgia (GD-DG) was the development of comprehensive constitutional reform (Zedelashvili, 2017). For this purpose, the GD-DG would need to reach significant electoral

support in order to count with constitutional majority of 115 MP out of 150 or to count with the votes of the opposition. As a consequence of the mixed electoral system, the 2016 elections allowed the GD-DG to secure 76,7% of MP with 48,7% of votes (Ruthrauff, 2017a). In this way the Georgian Dream reached exactly the constitutional majority of 115 MP, “by adding 71 majoritarian district mandates to 44 party list seats” (Zedelashvili, 2017: 2). This outcome illustrates the inherent disbalances of the mixed electoral system and specifically of the majoritarian component that favours the most supported party at local level.

Among the first announcements of the new government in 2016 was the decision to initiate a Constitutional reform in order to move to fully proportional system and to abolish the direct Presidential election and replace it with indirect election by a qualified commission. After having rejected in 2015 the initiatives of opposition and civil society organisations and after the failed Constitutional reform in 2014 (due to lack of parliamentary support), the Georgian Dream government announced their plans for Constitutional reform twenty days after the October 2016 parliamentary elections. This prompt announcement after the elections, shows the key role of that the constitutional majority had for the GD-DG. Among the topics to be included in the Constitutional amendment, GDDG officials suggested the abolishment of the direct Presidential elections, moving the Parliament from Kutaisi to Tbilisi and the definition of the marriage as a “union between man and woman”. Even if these suggestions were publicly discussed by GD-DG deputies and officials, the party leaders insisted that there were no pre-prepared decisions for the amendment (Civil Georgia, 2016g; Transparency International Georgia *et al.*, 2017a). The Decree of the Parliament for the Establishment of the State Constitutional Commission did not define any specific goals for the Constitutional reform beyond “the establishment of a constitutional system in the interest of long-term democratic development of the country” (Parliament of Georgia, 2016).

The 15 December 2016, two months after the parliamentary elections, the Parliament of Georgia established a State Constitutional Commission under the leadership of the Chairman of the Parliament, Irakli Kobakhidze, who would act as the Commission’s Chairman. The goal of the constitutional reform was “to establish once and forever such constitutional system, which will promote the country’s long-term democratic development” (Civil Georgia, 2016d). At this point the Chairperson promised that “if there is any norm, which will be assessed negatively by the Venice Commission, such norm will not be approved by the Georgian Parliament” (Civil Georgia, 2016d). In this way, the Kobakhidze established clearly the external legitimacy of the democratic reform processes, focusing fully on the expert opinion and recommendation of the Venice Commission. Such dynamic was observed also in chapters

V and VI. The initial configuration of the 73-members Constitutional Commission was formally balanced, as it included different parliamentary and non-parliamentary political parties, as well as representatives of civil society and the expert community (Civil Georgia, 2016h). Domestic actors, however, have criticised the process for “deflecting internal criticism and seeking external sources of legitimation” (Vakhushti Menabde, 2017).

In spite of the initial inclusivity of the Constitutional Commission, its legitimacy was reduced throughout the reform process, due to the unwillingness to take part in it and support its decisions expressed by different domestic actors. The process of drafting and discussion of the constitutional amendment was defined as much more organised and focused in comparison to the 2010 Constitutional amendment. The Constitutional Commission comprised three Working Groups covering all aspects from Human Rights to finances, and local self-government. The Chairperson of the Parliament, Irakli Kobakhidze, had a centralising role in the Commission, as he chaired all four working groups (Vakhushti Menabde, 2017).

The deadline for the drafting of the Constitutional reform was the 30 April 2017, which gave only four months for the discussions of the text. Furthermore, the drafting process in the framework of the Constitutional Commission led to the adoption of a draft reform as soon as 22 April 2017, additionally reducing the initial deadline. Due to this feature, the constitutional reform process was criticised as “rushed and hastily organised” by domestic civil society actors (ISFED *et al.*, 2017: 3). On the other hand, some interviewees noticed that this aspect contributed for the better organisation of 2017 Constitutional reform process, in contrast to the 2010 and other constitutional reforms that had more academic features and could involve months of discussions on the principles and aspects to be included (Interview 25).

The drafting process in the working groups of the Constitutional Commission was divided in three stages. The first stage consisted in a discussion of the principles and proposals advanced by its members. As part of the second round, the Secretariat prepared a draft text that was meant to reflect the consensus reached as a result of the discussion within the Commission. Importantly, at this stage the right of initiative belonged to the members of the Secretariat, being the other members excluded from the possibility to add possible amendments and proposals to the text. After this stage, the Chairman and Secretary of the Commission would hold consultations with both domestic and international actors, as civil society organisations and the Venice Commission. During the third round the members of the working groups would present their positions regarding the draft text. When there was a lack of consensus, decisions were subject to voting within the Constitutional Commission. Public discussions were planned at a later stage, leading to the final draft being issued in June (V. Menabde, 2017).

Importantly, the electoral system that was considered throughout these three stages of the drafting process and that was in the final draft of the Constitutional Commission issued in April 2017, had significant potential for disproportionate representation of the electoral outcome. In spite of the adoption of a fully proportional system, additional features would aim to “ensure stable majority and ability to form a government by the party that received the most votes” (Transparency International Georgia *et al.*, 2017: 6). These stabilising elements consisted in the adoption of a 5% threshold, the prohibition of electoral blocs and the allocation of all undistributed seats to the most voted party. The combination of these three aspects would undoubtedly have negative effects on small political parties and on parliamentary pluralism. Consequently, it was seen as a bonus system, which would benefit only the ruling or the winning political party (ISFED *et al.*, 2017; Ruthrauff, 2017a). As described below (see Participation and Competition) the adoption of such electoral system in the final draft reduced significantly the legitimacy of the text issued by the Constitutional Commission, as it did not reflect any of the proposals of the opposition and civil society organisations.

Shortly after the Venice Commission issued a negative opinion on the draft adopted by the Constitutional Commission (19 June), a different text of the Constitutional amendment was voted in the Parliament. The new text delayed the adoption of the proportional electoral system until 2024. The reason given for this change was the unwillingness of the majoritarian deputies to support its adoption from 2020. This new text was adopted on first and second reading in the Parliament on the 22 and 23 June 2017, respectively (Ruthrauff, 2017a). In sign of protest to the hasty way in which the Constitutional text was changed, discussed and approved, the opposition did not attend the parliamentary sessions of discussion and voting of the amendment. Consequently, the first reading of the Constitutional amendment counted almost exclusively with the support of the ruling party Georgian Dream (ISFED, 2017b).

The criticism of the Venice Commission (considered in detail below) did not lead to any significant changes in the draft or concessions on the side of the Georgian Dream. The new suggestion for draft amendment, sent to the Venice Commission in October 2017, excluded the bonus system in benefit of the most voted party and adopted the distribution of the unallocated seats among all parties. However, the adoption of the proportional system would be delayed until 2024, when a 5% threshold and prohibition of electoral blocs will be introduced. In 2020 the electoral blocs would be allowed and elections will be organised according to the mixed system with a 3% threshold (Venice Commission, 2017c). As a result of these concessions, the Venice Commission pointed that “the resulting electoral system, as from 2024, would be in full conformity with its recommendations and contribute to the formation of a stronger

parliamentary opposition to counterbalance a *strong government with an overwhelming parliamentary majority*” (Venice Commission, 2017c).

However, this conclusion of the report, led the chairperson of the Constitutional Commission and of the Parliament, Irakli Kobakhidze to claim that the opinion of the Venice Commission is “extremely positive” and “the proportional electoral system [...] is in full compliance with the legal standards and serves the significant progress – the step that none of the preceding Governments have made” (Parliament of Georgia, 2017). The criticism on the other side, regarding the lack of consensus and the non-adoption of the electoral system from 2020 was presented by Kobakhidze as caused by the opposition. Kobakhidze claimed that if the opposition would support the Constitutional reform, then the proportional system could be adopted from 2020. According to his statement, the opposition did not accept such agreement (Parliament of Georgia, 2017). However, on previous occasions the impossibility to apply the proportional electoral system, was explained with the lack of support of the 73 majoritarian deputies. On the other hand the opposition forces (United National Movement and European Georgia) would represent only 29 deputies. Therefore, a simple calculation shows that even if the opposition would support the reform, its votes would not be enough to compensate for the no-votes of the majoritarian deputies.

Furthermore, polarisation increased due to mutual accusations of the governing parties and the opposition for the delay in the adoption of the proportional system. On one hand, the ruling party made a couple of concessions to the opposition between the second and the third reading of the Constitutional amendment. These improvements in the electoral field include the elimination of the bonus system and the possibility for electoral blocs to run on the 2020 elections. This concessions came after the President and 20 political parties issued a statement asking for the application of the proportional system starting from 2020 (Civil Georgia, 2017c). The conflict and polarisation between the political parties was further strengthened when the opposition parties boycotted the final vote of the Constitutional amendment in Parliament and claimed that this was a one-party Constitutional amendment (OC-Media, 2017).

In conclusion, the recent reforms in Georgia introduced the proportional system from 2024, in combination with 5% threshold and a prohibition of party alliances. The mixed electoral system with a reduced threshold would still be applied in 2020. The Presidential veto on this reform was overruled by the Parliamentary majority (Civil Georgia, 2010b; G. Menabde, 2017). This reform was positively assessed by the Venice Commission and the EU, but its lack of social inclusion and delayed introduction until 2024 was highly criticised by civil society organisations (European Commission, 2017a).

The lack of consensus regarding the final version of the electoral system included in the Constitutional text was illustrated by citizens' protests and the vocal opposition of political parties. The demand for the application of the electoral system in 2020 were frequently voiced after 2017. Importantly, in 2019 a deep political crisis that would last 8 months was triggered by the address of a Duma representative in Russian in the Parliament. The protests were brutally suppressed with what was seen as a disproportionate use of force by the police. The dissatisfaction with the way the government managed the social protests, led to deeper legitimacy crisis for the GD-DG. Consequently, the social demands for the adoption of the proportional electoral system for the 2020 parliamentary elections re-emerged with new force and increased social support. This was a long-term demand of civil society organisations and opposition parties that disagreed with the 2017 Constitutional reform. Other demands of the continued protests were the resignation of the Speaker of the Parliament Irakli Kobakhidze, and of the Minister of Interior. After a week of protests, the Chairman of the Georgian Dream Ivanishvili announced the adoption of the proportional system with 0% threshold (Civil Georgia, 2019b). This decision together with the resignation of one of the key Georgian Dream leaders, Parliamentary Speaker and the Chairman of the 2017 Constitutional Commission, Irakli Kobakhidze, silenced the social protests in the country.

However, in November 2019 101 MP approved a law which reverted this decision of the GD-DG leader. The opposition and civil society organisations harshly condemned this step, while street protests led by a prominent youth movement demanded snap elections and the resignation of the government. Complicated negotiation between the main political parties developed between December 2019 and March 2020, under domestic and international pressure and mediation. An agreement out of this institutional deadlock was reached the 08 March 2020. According to the final memorandum, for the 2020 parliamentary elections, 120 MP will be elected through a proportional system and 30 MP through a majoritarian one. The threshold will be 1% of all votes and a capping mechanism would prevent "a single party that receives less than 40 % of the votes cast" from receiving a "majority of seats in the parliament" (Civil Georgia, 2020a). Furthermore, "30 electoral districts will be drawn in compliance with the pertinent ruling of the Georgian Constitutional Court and recommendations issued by the Venice Commission" (Civil Georgia, 2020a). This agreement solved a month-long deadlock in the negotiations and its significance is recognised by both domestic and international actors.

## ***II. IMPLEMENTATION OF THE REFORM***

In addition, to the reform process and the legal outcome of the Constitutional reform, it is important to consider the actual implementation of this legislation. The implementation of the 2020 agreement and its translation in citizens' rights during the 2020 parliamentary elections is essential for the political consensus and legitimacy of the institutions in the country. Therefore, the 2020 parliamentary elections will be a key indication of the degree to which the new legislation has been translated in new electoral practices. In order to analyse the general implementation of the electoral legislation, the 2018 Presidential elections will be studied, as they applied most of the legislative reform, apart from the change to proportional system

The 2018 Presidential election show some problematic areas for the electoral accountability in the country. The misuse of administrative resources led to blurred boundaries between the ruling party and the state institutions, raising in this way significant concerns regarding the equality between the candidates. These negative trends became more obvious between the first and the second electoral rounds. In the period before the second round, the government announced "a series of social projects and increases in welfare benefits", which "provided an unfair advantage for the GD-backed candidate" (OSCE/ODIHR, 2019b: 27). In addition, a debt relief of 1.5 billion GEL applied by the government to 600.000 citizens, was funded by the financial institution linked to Ivanishvili, the chairperson of the Georgian Dream. These initiatives were considered as a large-scale vote-buying by domestic and international observers.

Secondly, several candidates "used their free airtime, state funding and quota of party representatives in polling stations to support other contestants", which again can be considered as unfair competition (OSCE/ODIHR, 2019b: 12). Furthermore, many OSCE observers were informed that the GD and the UNM "collected personal data of voters prior to election day, and in the case of the ruling party, also collected commitments to vote for the GD-backed candidate" (OSCE/ODIHR, 2019b: 12). Furthermore, GD members recognised that "that public employees were asked to provide such lists as well" (OSCE/ODIHR, 2019b: 12). Interestingly, similar practice was denounced in Armenia by the Union of Informed Citizens, constituting in this way a serious violation of the voters' freedom and the candidates' equality. In addition, all of the above practices are considered to affected negatively the equality between the electoral candidates and to blur the boundaries between political parties and state institutions. Domestic civil society organisations and opposition parties denounced all these activities to the Central Electoral Commission. However, these claims were all rejected in benefit of a flexible interpretation of the rules which excluded any sanctions for the ruling party (OSCE/ODIHR, 2019b).

As a consequences of these flaws, the OSCE observation mission concluded that "candidates were able to campaign freely, however one side enjoyed an undue advantage" (OSCE/ODIHR, 2019b: 2). In this sense, it is interesting that apart from the use of administrative resources, the

political competition in Georgia is pre-conditioned by the wealthy position of Ivanishvili in the country. While in Armenia electoral violations are mainly based on the use of administrative resources, in Georgia the GD-DG does not count exclusively on the state and social resources, but uses private resources for influencing the political competition. The debt condemnation by the financial entity which is property of Ivanishvili was the most illustrative such case.

The 2018 presidential election also showed a “sharp polarization of the private media, negative campaigning and harsh rhetoric”, which affected negatively the electoral environment and the campaign period (OSCE/ODIHR, 2019b: 3). Furthermore, this trend of “negative, harsh and at times violent rhetoric” during the campaign was not addressed by the electoral authorities (OSCE/ODIHR, 2019b: 3). The insufficient regulation, consistency and transparency of the non-partisan members of the regional electoral commissions was also criticised by the OSCE observation mission (OSCE/ODIHR, 2019b).

In conclusion, the implementation of the electoral legislation showed weaknesses very similar to those observed in Armenia. The most significant flaw of the implementation and practical development of the legislation is the unfair and unequal competition between the main candidates. The existence of informal system of controlled vote and the use of private and public resources in campaign period undermines the basic pre-conditions for equal competition between the candidates. In addition, the high polarisation and even open conflict between the political parties has a very negative effects for the political system. This polarisation affects negatively citizens’ trust in political parties and in the institutional system. On the other hand, the agreement reached in 2020 regarding the adoption of the proportional system is an important manifestation of the possibilities to reach consensus under significant domestic and international pressure. In order to understand the exact role of the different factors that influenced the electoral reform process and its implementation, these aspects will be considered below. Specifically, the influence of the contextual factors of the trends of domestic participation and competition will be studied, as well as the international dynamics

### ***III. CONTEXTUAL FACTORS***

The electoral system and the shift from mixed to fully proportional model as well as the definition of the threshold are among the most controversial decisions in Georgian politics. The frequent changes in these features illustrate this point. For instance, between 1995 and 2005, the Parliament was composed of 235 deputies, 85 of which are elected by majoritarian vote and 150 by proportional (Georgia 2004: Art. 49). In 2005 the Parliament was reduced to 150 seats, of which 50 became majoritarian and 100 were distributed according to a proportional

system. Prior to the 2008 elections, this distribution shifted to 75 deputies for both majoritarian and proportional distribution. This change in the electoral system influenced the electoral outcome positively in benefit of the incumbent United National Movement (UNM) (Berglund *et al.*, 2013). Such frequent changes in the composition of the Parliament and in the rules for its election, indicates their adaptation according to the interests of the main political actors.

The political system in Georgia is defined by the recurrent electoral majorities that make possible the constitution of single-party-majority governments in 3 (out of 4 occasions) since 2004. Only in 2012 the Georgian Dream party constituted a minority coalition of four parties that reached 85 parliamentary seats and guaranteed its replacement of the UNM government. In 2016 a new Georgian Dream parliamentary majority of 115/150 returned the country to its traditionally centralized track (Nakashidze 2016). These single-party majorities made possible the adoption of repeated constitutional and electoral reforms (Nodia, 2017). In conclusion, the party competition in Georgia is defined by broad one-party majorities that dominate for two mandates the political system. In addition, since 2003 Georgia has experienced two transfers of power. This aspect is closely linked to the mixed electoral system.

The introduced in 1995 mixed electoral system has remained a key institutional legacy that has defined the political competition in Georgia. The benefits that it brings to the incumbent has defined the lack of willingness and the delays in its change by the ruling party (firstly UNM and then GD-DG), while parties in opposition would always support the need to adopt proportional system (firstly GD-DG deputies and later UNM deputies). This dynamics is a result of the benefits it provides to the incumbent (or the most voted party), and the disadvantages for the opposition (or less voted parties). For instance, as early as 2010 eight opposition parties suggested the adoption of regional proportional lists instead of the majoritarian element (Civil Georgia, 2010a)<sup>21</sup>. Key opposition concern in the 2010 Constitutional reform was that the such amendment should not take place without the reform of the electoral system (Babeck, Fish and Rechenbecher, 2012). However, the UNM was not willing to introduce a fully proportional system.

Most of these parties become coalition partners of the Georgian Dream when Bidzina Ivanishvili announced its establishment in 2012. The reform of the electoral system was a key point of GD-DG electoral programme in 2012, which was defined by its focus on pro-democratic reforms (Georgian Dream, 2012). The 2012 elections, however, did not provide

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<sup>21</sup> These eight parties were the National Forum, Conservatives, Republicans, Our Georgia – Free Democrats, Georgia’s Way, New Rights, Christian-Democratic Movement and the Peoples Party (Civil Georgia, 2010a).

constitutional majority to the Georgian Dream coalition as it was represented by 85 out of 150 MP. In spite of this limited possibilities, a Constitutional Commission led by members of the Republican Party was established in 2013, in order to address “serious shortcomings” in the Constitution (Civil Georgia, 2013b). Interestingly, the leaders of the Republican Party remained defenders of the proportional electoral system both in opposition and in the government (Public Constitutional Commission, 2012: 185). As member of the Georgian Dream coalition and leader of the Republican Party, Vahtang Khmaladze became the president of a new Constitutional Commission that was established in 2013. The reform suggested the adoption of the proportional system from 2020, in order to counter the possible opposition of the majoritarian deputies. However, this reform was not supported by the majority of deputies, due to the last-minute unwillingness of the opposition to support the initiative (Interview 30).

As a consequence of all these efforts and the accumulated criticism against the electoral system, in 2015 and 2016 the need for reform of the electoral system was a generalised consensus. Given that it was a GD-DG programmatic promise since 2012, the electoral reform could not be delayed, even more so after the GD-DG reached constitutional majority in the Parliament. On this occasion, the UNM was in opposition and clearly supported the change to fully proportional system, due to the negative effects of the mixed electoral system for its parliamentary representation. Consequently a broad platform of domestic actors (14 opposition parties and 8 civil society organisations) insisted on the need to change the electoral system prior to the 2016 parliamentary elections (ISFED, 2015). These overlap in the positions of the incumbent GD-DG and the opposition UNM, was the basis for the supposedly unchallenged adoption of the proportional system in the framework of the 2017 Constitutional reform.

In terms of domestic political competition, two key factors require attention – the high polarisation in Georgia and the influence of foreign policy preferences on the party system. Firstly, the conflictual political culture in Georgia leads to increased polarisation and difficult consensus-building processes. In previous cases this led to the lack of engagement in dialogue between domestic actors and to the creation of parallel platforms for discussion (Chapter VI). The level of polarisation around the constitutional reform increased also, due to the transformation in the party system after the 2016 elections. The second electoral success of the GD-DG in 2016 was followed by important divisions in all opposition parties, leading to fragmentation of the opposition only the three months after the elections. Key members of the Republican Party, the Free Democrats, the National Forum and the Burchanadze movement left their parties (Agenda.ge, 2016; Civil Georgia, 2016a, 2016b, 2016c). In addition, the main opposition party, the United National Movement (UNM), split in two between the National

Movement and European Georgia. Out of the 27 UNM Members of Parliament, 20 joined the European Georgia faction, while the other 7 continued their membership in the National Movement (Civil Georgia, 2017d). This situation led to a contradictory result. The National Movement remained loyal to Saakashvili, who continued supporting it for the 2018 Presidential elections. As a consequence of its broader social support based to a great extent to Saakashvili leadership and electors' loyalty, the National Movement managed to be the second most voted candidate in the 2018 Presidential elections with 37.74% of all votes casted. This electoral support, however, contrasted with the representation of its faction in the Parliament with just 7 deputies. On the other hand, the Presidential candidate of European Georgia was supported by 10.97% of all voters, while being represented in the Parliament by 20 MP (Civil Georgia, 2017d; OSCE/ODIHR, 2019b). This dynamic reflects the relationship between electoral support and the loyalty and personalist features of the political life in Georgia. In addition, these fragmented parties would suffer from a majoritarian system or a high threshold.

The second factor is the differentiation of parties based on foreign policy preferences of. Georgia's pro-EU stance is notorious, as in 2012 – 2019 the approval of EU integration is above 70%, the highest being 83% in 2018 (Thornton and Turmanidze, 2016, 2019). Citizens' preference for the EU has increased from 45% in 2015 to 66% in 2019. Since the UNM government (2003 – 2012), the European identity of Georgia was reinforced. Historical links with European political traditions, and the level of democratic development reached is a way to differentiate Georgia among other Eastern Partnership countries. Its European choice is perceived as the only possible choice for independent state and national identity (Interviews 17, 18, and 44). In opposition, Russia is presented as an occupier, an invader and a threat to its national identity and territorial integrity (Parliament of Georgia, 2005).

This trend that defined the UNM government after 2003 contrasted with the GD-DG campaign goal of improving the relations between Georgia and Russia announced in 2012. Ivanishvili's government aimed at overcoming the crisis and initiating a dialogue with Russia. Therefore, the GD-DG advocated that the normalisation of relations with Russia was possible and was not necessarily an obstacle for close partnership with the West. These different foreign policy strategies are based on the different perceptions the UNM and the GD have the role of Georgia and Russia. If the UNM saw Georgia as a small state that required Western help in order to resist Russia's pressure, GD leaders perceived Georgia "as a state with autonomy of action, one that can work out an enduring peace with Russia without external support or mediation" (Kakachia, Minesashvili and Kakhishvili, 2018: 824).

The GD government adopted very successful measures of normalisation, as the appointment of the former Georgian ambassador in Moscow, Zurab Abashidze, as a Special Representative for Relations with Russia. In the context of lack of diplomatic relations this was a very significant gesture that aimed to “restore cultural and trade relations in the nearest future” (Civil Georgia, 2012a). The nomination of Abashidze is very relevant given that he took part in informal visits organised by the Georgian Orthodox Church to Russia, when there were no diplomatic relations (Civil Georgia, 2012a). The GD also reassessed the 2008 war as an aggression against Georgia, in which “also [Georgia] has its own share of the blame for letting things the way they developed, which was confirmed by the European Union in its 2009 report” (Civil Georgia, 2013c). Such statements were interpreted in Russian media, as if “Ivanishvili accused Saakashvili for starting the war in South Ossetia” (Civil Georgia, 2013c).

Subsequently, a series of bilateral meetings between Abashidze and Russia’s deputy foreign minister Karasin between 2013 and 2016 led to renewal of the access of Georgian products to the Russian market. The visa regime for Georgian citizens was eased and a visa-free regime was discussed. Besides, prisoners in both countries accused for being spies were liberated (Krylov, 2017). These measures of normalisation, however, were also subject to the development of the situation in each country. For instance, the Abashidze-Karasin meetings were interrupted during the 2016 campaign for parliamentary elections in Georgia, as a consequence of what Russia interpreted as “hard anti-Russian rhetoric” (Krylov, 2017: 11).

In this context Georgia’s foreign policy is one of the main sources of polarisation, as the approach of the political forces towards Russia divide the society between those that seek normalisation and those that see Russia as the invader. This opposition was strengthened by the process of “borderisation” and creeping occupation, which consists in the expansion of the territory under occupation by South Ossetia and Abkhazia, supported by Russian troops. This process has been constantly developing since 2009, increasing the chances for violent clashes and conflict in the region. It also led to the integration of complete villages and key infrastructure (as gas pipeline) in the occupied territory. Besides, the population had to leave its homes, due to the risk of arrest. Furthermore, this situation reduces the credibility and social trust in the government and in Western international organisations as the EU and NATO, that seem incapable of controlling the territory. Furthermore, this process would hypothetically be a key obstacle for integration in NATO or the EU (Kakachia et al., 2017). The borderisation strategy is an example of the use of direct imposition by Russia. The extended period during which this process takes place increases the sense of military threat in the country.

In parallel the negotiation for the AA/DCFTA between the EU and Georgia was successfully concluded in 2014, while the regulation of the visa free regime between the EU and Georgia was adopted in February 2017. These two contractual agreements have been considered as key incentives in the development of the EU-Georgia relations and for the advancement of the reform processes. The monitoring of the Association Agreement provides opportunity for the assessment of the domestic political reforms, being considered as considerable incentives for Georgia. In addition, the status of Associated partner to the EU is translated in substantial financial assistance. Georgia was expected to receive between 335 and 410 million Euros between 2014 and 2017 (Eastern Partnership: Civil Society Forum, 2014). In addition, the important economic resources were expanded based on the more-for-more principle, together with the regular normative reporting of the EU. In conclusion, both the increased funding for, and the progress of the negotiation in AA/DCFTA and VLAP are significant incentives offered by the EU in the period 2012- 2017.

#### ***IV. POLITICAL COMPETITION AND PARTICIPATION***

The first suggestions for electoral reform (after the failed 2014 Constitutional reform) re-emerged in 2015 as a joint platform for promotion of the electoral reform, established between 8 civil society organisations and 14 opposition political parties “with facilitation of the President” (Transparency International Georgia *et al.*, 2017a). The members of this initiative suggested a combination of national (75 MP) and regional proportional system (75 MP) (ISFED, 2015). This model would address the concerns of the majoritarian deputies due to their loss of power and positions at local level in the case of a single national constituency, that would shift the control of the electoral competition towards national political parties. This was the main consideration for majoritarian deputies against the fully proportional system both in 2013 and 2016 (Interview 30). This aspect illustrates the way in which different domestic actors compete for retaining the control of key institutional positions that are perceived as an important asset. This proposal was, however, rejected by the GD-DG with the explanation that there was not enough time for developing such a reform before the October 2016 parliamentary elections (ISFED, 2017a). Importantly, this proposal of the opposition and civil society organisations came exactly one year and a half before said elections.

The President of Georgia, Margvelashvili, and his administration were the most obvious excluded actor from the Constitutional reform. Domestic observers suggest that the reasons for the abolition of the direct presidential elections was the desire of the Georgian Dream to limit the influence of the President on the political system, due to the conflict between the President and the Executive (see Chapter VI). On the other hand, domestic experts argue that the direct

election of the President intrinsically leads to a conflict within the executive and legislative, due to the electoral legitimisation of two actors (Interview 25). The development of the constitutional reform indicates that it was the culmination of this conflict between the President and Georgian Dream government. In the initial phases, the President suggested to establish a Working group that would be co-chaired by the President, the Prime Minister and the Speaker of the Parliament (Civil Georgia, 2016g). However, as this suggestion was rejected by the GD-DG majority, the President announced and he and his representatives will take not part in the Constitutional reform led by the GD-DG (Civil Georgia, 2016f). Consequently, the Head of the President's Administration, National Security Council Secretary and the Parliamentary Secretary of the President did not take part in the Constitutional Commission (ISFED, 2017a).

In parallel to the Constitutional reform the President initiated a campaign entitled "The Constitution Belongs to All" that was not intended to be an alternative process, "but to further that process by democratic means" (Fuller, 2017). This initiative was interpreted by Kobakhidze, the Chairperson of the Parliament and of the Constitutional Commission as "deliberate defiance of both the parliament and the constitutional commission, and as demonstrating regrettable lack of respect for the parliament" (Fuller, 2017). The mutual accusations of lack of legitimacy continued throughout the reform process. Lastly, after consultations with the opposition, the President imposed a veto, which was overridden by GD-DG majority and eventually the Constitutional amendment was adopted (Agenda.ge, 2017b). This dynamic confirms the importance of the conflictual political culture noted above. The lack of engagement in dialogue and the right to be voice one's perspective was a defining feature for Georgian political competition and participation, which was observed also in the 2010.

The Chairman of the State Constitutional Commission also the Chairman of the Parliament, Irakli Kobakhidze. It was composed of 73 members and included 38 representatives of parliamentary and non-parliamentary political parties, where the Georgian Dream was represented by 23 deputies (Civil Georgia, 2016e). The commission was criticised as the participation of governmental officials and pro-GD-DG experts in the Commission gave the impression of overrepresentation of the ruling party (Transparency International Georgia *et al.*, 2017a). The Figure 22 below shows the affiliation network built on the basis of the curricular information of all the members of the Constitutional Commission. The affiliation network below is a simplified version, which reflects only those actors with more than one connection to other actors, meaning that all actors with only one link to the network have been deleted. This simplification was made, due to the high number of actors involved. Regarding the presence of officially declared members of the GD-DG in the Commission, the affiliation

network has shown that 29 members of the commission have been affiliated in the past or are currently officially affiliated with the Georgian Dream, including members of the executive and the advisor to the Chairman of the Parliament and the Commission. Therefore, the governing party is represented in the Constitutional Commission by six more of its official members. Meaning that 29, instead of the official 23, members of the 73-member commission have links to the GD-DG. Apart from this observation, the composition of the Constitutional Commission is balanced in terms of the political and social representation. The Alliance of Patriots which supports the GD-DG initiative is also represented by two members, which provides the support of 31 members automatically. According to civil society organisations in Georgia, there was an “impression that some of the independent experts were either affiliated with the ruling party or had views similar to those of the ruling party representatives” (Transparency International Georgia *et al.*, 2017a). However, such relations remain a speculation as there is no formal proof for coordinated action by experts.

The way in which the reform process developed and the decision of the opposition to leave the Constitutional Commission reduced the legitimacy of the measures adopted. A key moment which reflected the limitations in the participation in the Constitutional Commission was the last stages of the drafting. The credibility and legitimacy of the reform decreased significantly after the inclusion of the 5% threshold, the prohibition of blocs and the ‘bonus’ system to the most voted party. Civil society organisations suggested reducing the threshold to 3% and two alternatives for the allocation of the undistributed votes<sup>22</sup>, none of which was supported by a majority of members of the Commission (ISFED *et al.*, 2017). The disagreement of most civil society organisations with the electoral system (and other weaknesses<sup>23</sup>) led to the withdrawal of their support (Transparency International Georgia *et al.*, 2017b).

In addition, seven opposition parties represented in the Constitutional Commission decided to boycott its last sessions as they considered that “the government is still trying to tailor the electoral system to the interests of the ruling party” (Civil Georgia, 2017b). As a reaction the chairperson of Commission terminated the membership of 13 representatives of the opposition parties (Vakhtang Menabde, 2017a; Chareli, 2018). The parties that disagreed with the last draft amendment were the United National Movement, European Georgia, the Alliance of Patriots, Free Democrats, the Labour Party of Georgia, the Democratic Movement

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<sup>22</sup> These alternatives were the application of the D’Hont method or limiting to 80 the mandates of the first party.

<sup>23</sup> Other weaknesses of the Constitutional amendment according to civil society organisations were the indirect Presidential elections and the inclusion of a definition of marriage as a union between a woman and a man.



– United Georgia, and Movement State for the People (Chareli, 2018). Therefore, this reduction in the number of members of the commission, together with the Presidential representatives means that a total of 16 out of its initial 73 members were not taking part in the final voting of the draft. The members present when the final draft was adopted were 57 out of the initial 73. Out of these 57 members, 8 members from civil organisations voted against the draft, while 43 out of the initial 73 members supported it (My Parliament, 2017; Chareli, 2018). This process shows a dominant decision-making, rather than consensual negotiation. It also illustrates that the GD-DG majority would approve the draft without need of the opposition.

This trend continued during the next months of the Constitutional reform, with statements of the President and opposition parties, as well as civil society organisations which opposed the decision to delay the adoption of the proportional electoral system until 2024 (Civil Georgia, 2017c). The conflict and polarisation between the political parties was illustrated also by strengthened when the opposition parties boycotted the final vote of the Constitutional amendment and claimed that this was a one-party Constitutional amendment (OC-Media, 2017). Undoubtedly, this dynamic illustrates Georgia's conflictual culture significantly reduced the legitimacy of both the process and the outcome of the reform.

The lack of public consensus even regarding the final version of the electoral system was illustrated by citizens' protests in 2019 and 2020. Once the social discontent led to large-scale protests, its leaders demanded the use of the proportional electoral system for the 2020 parliamentary elections. This was a recurrent claim of civil society organisations and opposition parties after the 2017 Constitutional reform. The demands of street protesters, together with the pressure exerted by international actors were key factors that imposed the need of negotiation and consensual agreement for the 2020 parliamentary elections.

Interestingly, the trigger of these protests was the address in Russian from the seat of the Parliamentary Speaker by the Sergei Gavrilov, a member of the Russian Duma for the Communist Party and President of the General Assembly of the Interparliamentary Assembly on Orthodoxy. The protests were brutally suppressed with what was seen as a disproportionate use of force by the police. Consequently, the demands of the continued protests included the resignation of the Speaker of the Parliament Irakli Kobakhidze, the Ministry of Interior and the adoption of the proportional electoral system for the elections in 2020. After a week of protests, the Chairman of the Georgian Dream Ivanishvili conceded to two of these demands as Kobakhidze resigned and the proportional system was adopted (Civil Georgia, 2019b).

After the protests achieved their goals, they dissolved, but during this political crisis new social leaders and trends of participation emerged, as the student and youth movement.

This movement did not, however, accept the appropriation and the domination of the protests by any political party, including the UNM and European Georgia (Kakhishvili, 2019). This unwillingness to allow political parties to hijack the protests corresponded not so much with the identification (or lack thereof) of these parties with the trigger of the protests –Russian interference in Georgia. Instead, it is argued that this negative attitude corresponds to the low levels of trust in political parties, which has reduced from 21% in 2012 to 8% in 2017. The main reasons for this lack of trust are the perceived lack of “necessary competence to manage various policy areas of concern for the public” and the belief “that parties primarily represent the interests of their own or those of their leaders and/or donors” and the lack of the integrity and predictability of political parties (Kakhishvili, 2016: 10). In addition, parties are not perceived “to be sufficiently institutionalized to serve as guarantees they will implement their own promises” (Kakhishvili, 2016: 10). Therefore, personalist, non-transparent functioning, as well as the perceived lack of integrity of political parties in Georgia, contribute for citizens’ disillusionment and lack of thrust (Kakhishvili, 2016). On the contrary, the dynamics of the social protests of 2019 and 2020 reveal an increased legitimacy of unconventional trends of participation.

In terms of both domestic and international dynamics of participation in the electoral reform in Georgia, its evolution is very significant. When in November 2019 the Parliament failed to support the proportional system, street protests re-emerged and demanded snap elections and resignation of the government. International mediation and two-weeks permanent protests led to negotiations between the main political parties that took place in five rounds between December 2019 and March 2020 (Civil Georgia, 2019e). The most difficult deadlock was when opposition parties left the negotiation table after the sentence and imprisonment of one its leaders, the former mayor of Tbilisi, Gigi Ugulava. In spite that the trial against him began in 2017, the sentence at this precise moment was interpreted as a result of political pressure put on the Judiciary (Civil Georgia, 2020b). This deadlock in the negotiations instantly led to renewal of the protests.

Importantly, the pressure put by domestic civil society (civil society organisations and recurrent protests) in combination with international actors was the key combination for moving the negotiation process forward. The recurrent citizen protests proved to be essential. It is possible to conclude that, as in Armenia, persistent unconventional participation has become an effective and legitimate way to correct the trajectory and the outcomes of uncompetitive and dominant policy-making, as was the 2017 Constitutional change. Citizens have lost their trust in political parties as effective intermediaries organisation for social representation.

Another aspects of domestic competition that contributes to increased polarisation in Georgia is the increased opposition between liberal pro-Western and conservative sectors of

society that align with Russia's identity-based discourses. Some domestic actors see a contradiction between Georgia's traditional identity and the values promoted by Western actors. The politicization of such issues has polarized domestic competition in Georgia with direct implications on the processes and outcomes of electoral accountability. Interviewees have confirmed that Georgians experience an actual dilemma regarding the possibility "for us, Georgians to be part of all those values promoted in the EU" (Interviews 18, 17 and 44). This internal contradictions of Georgian society are exploited in the political realm by minoritarian and nationalist actors that polarise domestic competition.

In the 2017 Constitutional reform this concern was reflected mainly in two aspects – the inclusion of a definition of marriage as "a union between a man and a woman for the purpose of creating of family" and the prohibition of any acquisition of agricultural land by foreigners (Parliament of the Republic of Georgia, 2017). These changes in the Constitution are key demands of the conservative sectors of society. Their most vocal supporter in the Parliament was the Alliance of Patriots, which since 2016 is represented by 6 MP. It is a nativist, populist, far-right political party which seeks the promotion and protection of "Georgianhood". It calls for "genuine patriotism", a behaviour "in accordance to the "Georgian spirit", which is defined as "dedication to the homeland, devotion to faith in God, love for everything Georgian and respect to our native language" (Samkharadze, 2020: 3).

The main threats for these Georgian nativism is the United National Movement, which is perceived as betrayers of the country and "executioners", while liberal groups are described "as invaders in social space" that request the protection from the state, while in fact are trying to make us reject our faith, Georgianhood" (Alliance of Patriots, 2017; quoted in Samkharadze, 2020: 3-5). The influence of the Alliance of Patriots on the policy-making includes several fields. In the case of the 2017 Constitutional reform, the inclusion of the definition of marriage and the prohibition of foreign land ownership was considered as one of its key achievements (Interviews 19 and 28). Secondly, it has supported the Georgian Dream at key moments. The Alliance of Patriots organised large-scale rallies against the UNM before the second round of the 2018 presidential elections (Civil Georgia, 2018).

Another key actors in this field is the Georgian Orthodox Church (GOC), which after the demise of the Soviet Union became "by far the most formidable moral power in Georgia" (Nodia, 2018). It is the most trusted institution, as 88% of survey respondents have favourable opinion about it (Center for Insights in Survey Research 2017a;). The Church has the moral authority to influence both personal and political decisions. The GOC has increased the frequency and the influence of its politically related statements, which manifests in three ways.

Firstly, its statements influenced domestic policy-making decisions as the idea to reinstitute Georgian monarchy or its negative stance on the decriminalisation of drugs (Narsia, 2018).

Secondly, polarisation has increased with the creation of two opposite poles between conservative nativist and pro-Western liberal social groups. In the international field, the GOC has officially declared that it supports European integration. However it has voiced its opposition to specific aspect of EU harmonization, as the LGBT rights, that are considered to be against traditional Georgian values. In 2014 the GOC opposed the anti-discrimination law adopted as a condition for the Association Agreement. This law defined “sexual orientation” and “gender identity” as prohibited grounds for discrimination. This was considered by the GOC as “a propaganda and legalisation” of “non-traditional sexual relations”, which “believers [...] consider to be a deadly sin” (Civil Georgia, 2014b). The GOC opposed this requirement, identifying it as disrespectful of Georgian traditional values.

A week before the 2019 Tbilisi Pride, the Patriarchate issued a strong-worded statement defining it as a “sodomite sin”, which is “absolutely unacceptable” and called the authorities “not to allow such an event” (Civil Georgia, 2019d). In addition, the GOC requested “from foreign embassies [...], international organisations, Public Defender and other institutions [...] not to encourage such activities in our country” (Civil Georgia, 2019d). As a reaction, radical groups organised an alternative rally and two days later a nativist leader, Levan Vasadze announced the formation of “vigilante patrols against gay propaganda” (Civil Georgia, 2019c). These violent rallies undoubtedly increased the social and political polarisation.

This conflict between nativist, conservative and progressive liberal sectors also affects political competition. Besides the Alliance of Patriots, the Georgian Dream is also seen as flirting with such groups, as they have gained significant visibility and potentially electoral support (Narsia, 2018; Nodia, 2018). When the GOC called against the “distorted understanding of freedom of speech and [...] for restrain in misusing this right” (Civil Georgia, 2019d), a GD deputy agreed that “Of course, defamations and insults [...] are unacceptable”, while the UNM leaders saw this as an “attempt to limit the freedom of expression” (Civil Georgia, 2019d). This opposition is representative of the current polarisation between nativist and liberal progressive ideas. Lastly, the action of nativist and conservative groups is also strengthened through specific media outlets and TV channels. (Nodia, 2018).

## ***V. INTERNATIONAL ACTORS***

The Venice Commission was among the most active organisation in the Constitutional reform process. Its report on the draft of the Constitutional Commission concluded that the

inclusion of a combination of blocks prohibition, 5% threshold and bonus system for the most voted party “lead to a serious infringement of the principle of equality of effect” (Venice Commission, 2017: 6). In addition, it also recommended “that other options of allocating of undistributed mandates [...] are taken into consideration” (Venice Commission, 2017: 6). This opinion might be considered as relatively effective as the text voted in the Parliament four days after its publication, dropped the bonus system. However, it also delayed the adoption of the proportional system until 2024, which provoked very negative domestic reaction.

A trend of cooperation between advocacy civil society organisations and international actors was also observed. After the first parliamentary vote in June 2017 of the draft that delayed the adoption of the proportional system, 32 advocacy organisation addressed the EU High Representative, the European Parliament and the US State Department, arguing that the negative effects for the “quality of democracy in the country” of this “dangerous attempt to consolidate political power” require the international institutions to “deliver very strong messages across to the Government and the ruling party in Georgia that these tendencies and inclinations towards consolidation of power are incompatible to the Western standards of Democracy and thus unacceptable” (ISFED, 2017b). In addition, civil society organisations claimed that this reform in “a country which is considered by many as a frontrunner in the post-Soviet” space might establish a bad precedent and lead to negative spill-over in other countries (ISFED, 2017b).

The reaction to these developments focused on the Venice Commission and involved personally the President of the Venice Commission, Gianni Buquicchio, that travelled to Georgia at the end of June. He recognised that he was “disappointed and [became] more and more disappointed for every hour”, given that the “process was a really promising one” due to the agreement of Georgia’s political forces and society, but the reform process had reached deadlock (DFWatch, 2017). Throughout the summer months Gianni Buquicchio and the Venice Commission tried to broker the talks between the main political forces. As a result, broad talks with the opposition took place in mid-August, but no agreement was reached (Radio Free Europe, 2017a). The lack of any significant advances led to harsher statements of the President of the Venice Commission, who pointed that “the postponement of the introduction of the proportional system to 2024, as well as the repeated failure of the Georgian parties to reach consensus on the revised Constitution through negotiations is disappointing” (Buquicchio, 2017). As a result of this failure a meeting in Strasbourg was postponed until a new draft was submitted to the Venice Commission.

In October 2017 the Venice Commission issued a second Opinion on the Constitutional reform, taking into consideration the draft adopted in June and the suggestion drafted in

September 2017 by the Georgian Parliament. It concluded that the delay in the adoption of the proportional system was “undoubtedly highly regrettable, as the change to the proportional election system is the most important aspect of the reform and the key to reaching consensus” (Venice Commission, 2017b: 6). Furthermore, the position of the Venice Commission remained critical on the complex system for allocation of undistributed seats included in the draft not only because the “bonus system is also a major obstacle to reaching consensus”, but because it did not fit the political context in Georgia (Venice Commission, 2017b: 7). Specifically, in Georgia there is not any “problem of instability of parliamentary majorities, but [...rather...] parliamentary majorities tend to be overwhelming” (Venice Commission, 2017b: 7). However, the Venice Commission commended the willingness of the authorities to abandon the bonus system and pointed that “the resulting electoral system, as from 2024, would be in full conformity with its recommendations and contribute to the formation of a stronger parliamentary opposition to counterbalance a strong government with an overwhelming parliamentary majority” (Venice Commission, 2017c). This last conclusion was presented as “extremely positive” by the Chairman of the Constitutional Commission, who ignored all the above criticism on the 2020 parliamentary election (Parliament of Georgia, 2017).

Before the third reading of the Constitutional amendment the bonus system was deleted together with the prohibition of electoral blocs to run on the 2020 elections. The President, civil society organisation and opposition parties expressed their opposition to the reform and defined it as a one-party Constitutional amendment (OC-Media, 2017). It is possible to conclude that at this point international organisations, mainly represented by the Venice Commission, were not successful in changing key aspects of the Constitutional reform, which was considered as instrumental for the Georgian Dream to retain power.

Interestingly, domestic advocacy organisation adopted a flexible communication strategy. The main arguments addressed to international organisations was that the democratic backsliding of Georgian democracy is a dangerous precedent for the other Eastern Partnership countries. In addition, when arguing with the ruling party, advocacy organisations claimed that the international reputation of Georgia was at stake if the amendment was adopted (IDFI, 2017). From this dynamic it is possible to conclude that the democratic reputation of Georgia is the main claim used to shame and influence the evolution of the political reforms. In addition, at that point international actors were seen as the main arbiter for the assessment of the democratic features of the Constitutional reform.

Similar dynamic continued in 2019 and 2020. However, if at the previous stage the expert opinion of the Venice Commission was the almost exclusive gate-keeper, in 2019 and 2020 the

persistent and mass street protests changed this dynamic, leading to the intervention of more political international organisations which mediated and put pressure for more democratic and consensually-accepted institutional framework. If the June 2019 concession of Ivanishvili to move to proportional electoral system from the 2020 parliamentary elections was mainly a response to the national-wide protests, the interaction between domestic advocacy organisations and international actors (EU and US) was much more obvious after the November 2019 parliamentary vote that reversed this decision. Initially, both civil society organisations and international organisations issued separate statements of disappointment with the decision to delay the adoption of the proportional system. The EU delegation and the US Embassy in Tbilisi pointed that the adoption of the proportional system from 2020 was “understood as an important step forward in Georgia’s democracy, and there was political consensus behind it and a joint commitment from all sides to work towards this end” and asked to work towards the rebuilding of trust (EU Delegation to the Republic of Georgia and US Embassy to the Republic of Georgia, 2019).

The negotiations between the Georgian opposition and the ruling party counted with the facilitation and mediation of international actors and civil society organisations. The first meeting (30 November 2019) between the opposition and the Georgian Dream, was organised “upon the initiative of foreign diplomats accredited in Georgia” and counted with the presence of “Carl Hartzell, Ambassador of the European Union to Georgia and Venice Commission’s Executive Secretary, Thomas Markert”, and a representative of the US embassy (Civil Georgia, 2019e). In addition, the 09 December the advocacy organisation ISFED and the EURONEST Parliamentary Assembly hosted a similar discussion between the Georgian Dream and opposition parties. The meeting counted also with the presence of civil society organisations, and EU representatives as “the EU Ambassador to Georgia, Mr. Carl Hartzell, [...] the Co-Chair of EURONEST Parliamentary Assembly, MEP Andrius Kubilius (EPP, Lithuania) and MEP Nacho Sánchez Amor (S&D, Spain)” (ISFED, 2019). This process of negotiation and consensus-building was very complex, but also very successful, as an agreement was reached the 08 March 2020. The implementation of this decision in the 2020 elections is essential for the political consensus and legitimacy of the institutions in the country.

The role of international actors was recognised both domestically and by the international actors themselves. The EEAS statement highlighted that this agreement was “the outcome of more than three months of intense negotiations facilitated by the representatives of the European Union, Germany, the Council of Europe and the United States in Georgia” (EEAS, 2020). It also pointed that this agreement “reflects a desire to decrease the unhealthy political polarisation in Georgia” (EEAS, 2020). In addition, domestic experts recognised that the West

was “an important, if not the main, participant in the process”, given that Western actors, including the EU, successfully exerted leverage through conditionality (Nodia, 2020). As Ghia Nodia acknowledged if it was not because of the “harsh and persistent criticism and allusions of sanctions regarding the government or specific representatives” made by the “international democratic society”, “Ivanishvili’s team probably would not have made significant concessions” (Nodia, 2020). It is important that the intervention of the EU and other international actors was an essential factor for achieving the goals initially voiced by the protest movement in the country. This role of international actors for the legitimization of democratic reform processes is key element in Georgia. In conclusion, the combination of pressure exerted by unconventional street protests, opposition parties, civil society organisations and international organisations achieved this positive outcome. In conclusion, the use of strict conditionality and street protests seem to have made the difference in this case. Ivanishvili made the first concession in June 2019 in response to the persistent protests, while the five round negotiations took place under the shadow of unrest and the international conditionality.

The case of Georgian constitutional reform illustrates how the links between domestic policy-making and international dynamics influence both political competition and constitution-making. The decisive pro-EU orientation of the country was translated in specific provisions in the 2017 Constitutional amendment. Article 78 of the current Constitution stipulates that “[t]he constitutional bodies shall take all measures within the scope of their competences to ensure the full integration of Georgia into the European Union and the North Atlantic Treaty Organization” (Parliament of the Republic of Georgia, 2017). This represents a very significant foreign policy statement given that the revision of the Constitutions includes the need of its validation by two consecutive governments. In addition, it is important that this trend of constitutionalisation of the foreign policy decisions was also observed in the case of Armenia. This dynamic in the Eastern Partnership illustrates to what degree this question is being politicised and the role that it plays in these countries.

The influence of Russia in Georgia counts mainly on the imposition by force of creeping borders in the South Ossetia and Abkhazia. As described this process has continued for several years and is slowly approaching key Georgian cities and infrastructure. This increases the tension and sense of urgency in the population regarding the need to solve this situation. In a way it can be interpreted as a punishment for the close relations of Georgia with the West, and more specifically NATO (see Chapter VI). From its perspective, since 2008 Russia defends the rights of South Ossetian population from Georgian aggression.

If Russian leverage in Georgia is considered, it has increased its relevance since the beginning of the GD-DG government, which successfully negotiated the access of Georgian products to Russian markets. Such measures were reversed when Russia as a punishment for specific domestic developments in Georgia. For instance, as a reaction to the 2019 protests that emerged against the address of a Russian deputy from the Spokesperson's seat in the Parliament, Russia imposed ban of flights and holiday trips organised in Georgia. Given that this decision was adopted in early July, it affected negatively the tourist sector (Agenda.ge, 2019; Lomsadze, 2019). From the perspective of Russia's government these were anti-Russian discourses that needed to be remedied, while Russian citizens were not safe in Georgia. As was illustrated later by Russian citizens that attended the protests and remained in Georgia, the protests were addressed against the occupation and against Russia's government and not against Russian citizens or the language.

Importantly, the trigger of the 2019-2020 protest in Georgia was a result of the linkages between conservative-oriented elites. Specifically, the Inter-Parliamentary Assembly of Orthodoxy is a very illustrative example of an organisation which seeks to combine the values of parliamentary democracy and orthodox Christianity. It was founded in 1994 as a reaction to the transitions in many orthodox countries in Eastern Europe and Asia (Interparliamentary Assembly on Orthodoxy, 2019). The President of its General Assembly, Sergey Gavrilov, was the Communist Duma Member that used the Speakers seat in the Georgian Parliament for his address in Russian to the Assembly. As a consequence of the strong feelings and the protests that this provoked, he had to be evacuated from the Parliament and the country. However, the highly complex combination of democratic, communist and orthodox discourse is illustrative of the type of anchors created among representatives of this conservative elite.

When considering linkages between Georgian and Russian societies, it is important to take into account the correspondence between Russian normative influence and the discourses adopted by relevant domestic actors. It is therefore, hypothesised than the external influence acquires different dimension when it relates to domestic trends of political competition, due to its consequences for the electoral outcome. This hypothesis becomes evident when the Alliance of Patriot is analysed. The Alliance officially supports military non-alignment, as "the only way to peace", while the cooperation with the EU is seen as necessary (Civil Georgia, 2019a). The narrative used by the Alliance of Patriots relates with the neo-conservative discourse promoted by Russia, as the need to preserve national and traditional values.

In spite of the lack of diplomatic relations between Georgia and Russia, the visits and relations between the Alliance of Patriots' MPs and Duma deputies remain active. In 2017 six

members of the Alliance of Patriots met with representatives from the Russian Duma and “agreed to set up an informal group of cooperation” (Civil Georgia, 2017a). In addition, in 2017 and 2018 the Alliance of Patriots visited Moscow twice, including an international conference on “The Role of the interactions between political parties and blocks in the interparliamentary cooperation in CIS countries” (Georgia Today, 2018; Parliament.Ru, 2018). The representative of the Alliance of Patriots expressed the desire to continue this cooperation and to discuss in this framework the relations with Abkhazia and South Ossetia. He also regretted that Georgia is the only country that had a visa regime and did not have diplomatic relations with Russia (Parliament.Ru, 2018: min 2:26:00 - 2:29:00). These relations illustrate the links between the main conservative party in Georgia and the Russian Duma, which shows their linkage in a period when there are no direct or diplomatic relations.

In addition, the value-based discourse serves as a fruitful basis for cooperation and mutual support of the Russian state and the Russian Orthodox Church (ROC), which on the other hand maintains close relations with the Georgian Orthodox Church. As the Georgian Orthodox Church, the ROC prioritizes collective traditional values and supports the patriotic identity sought by Russia’s institutions above individual rights (Harzl 2017: 381-282). This is also the case of the Georgian Orthodox Church is canonically in communion with the Russian Orthodox Church (Grdzeldze, 2010). Therefore, against the background of the lack of diplomatic relations between Georgia and Russia, the visits and connections between Russian and Georgian MPs (from the Alliance of Patriots), the Georgian Orthodox Church and the Duma or the conservative Orthodox Parliamentary Assembly illustrate the links established between conservative elites , as well as the role of international anchors in the definition of this identity in Georgia and in Russia (Civil Georgia, 2009c, 2017a; Nodia, 2018).

## ***VI. FREEDOM AND EQUALITY***

The next step of the analysis is to consider the implications of the electoral reform for the substantive dimensions of Freedom and Equality. The electoral process and its legal outcome will be considered below. However, given that the 2020 elections have not taken place yet, the practical implications of its implementation cannot be considered. As an illustrative example of the empirical development of the legal dimension, the development of the 2018 presidential elections will be considered.

The final outcome of the 2017 Constitutional reform in the aspects concerning the electoral system can be considered as very positive in terms of equality. The transition from a mixed system to a proportional one in 2024, with an intermediary step in 2020 elections which limits the distorting effects of the majoritarian element is considered as a significant advancement in terms of equality.

The mixed system that dominated the post-Soviet political system in Georgia undoubtedly contributed to the development of dominant parties that rule for two consecutive mandates. The distorting effects of this system were obvious in the 2016 elections outcome. Specifically, the GD secured 76,7% of MP with 48,7% of votes (Ruthrauff, 2017a), reaching constitutional majority of 115 MP, due mainly to the 71 majoritarian mandates (Zedelashvili, 2017: 2). The proportional system to be fully adopted in 2024 will contribute for the dominant trend in Georgian system, in which one part has a sur-plus majority for at least two mandates. It is expected also to contribute for greater trust and accountability of the political parties, while reducing the polarisation due to the need to negotiate and build consensus between parties. On the mid-term the high threshold together with the prohibition for collation might affect negatively this positive aspects, reducing the possibilities of small parties to have representation in the Parliament and to influence policy-making.

Such electoral outcomes were considered as negative for the political system, consolidating in this way the social consensus regarding the need to reform the electoral system. The need of the reform and the adoption of the proportional system was acknowledged by both the ruling party and the opposition. However, the protracted and polarised process of reform shows that the intentions of all the actors involved did not correspond to these initial declarations regarding the need of the adoption of the proportional system. Given the party fragmentation after the 2016 Parliamentary election, the electoral rules adopted by the Constitutional Commission and the Parliament in 2017 would clearly exclude many political parties from parliamentary representation in 2020.

Measures as the prohibition to establish electoral blocs in combination with the 5% threshold would clearly reduce the competition as alternative parties will be excluded from participation in Parliament and from state funding. However, these measures seem to adapt well to the current interests of the Georgian Dream, while being contradictory with its own political development. In 2012 the Georgian Dream managed parliamentary majority and government, due to its membership in a 6-party electoral bloc. Therefore, this reform process clearly illustrates how domestic political actors use institutional rules according their preferential fit in order to improve and/or retain their power positions. This analysis becomes even more relevant when the fragmentation of the opposition after 2016 is considered. Therefore, after 2016 the GD-DG consolidated its position at national and local level. An important number of parties did not pass the 5% threshold and did not have access to public funding. If this same situation would be repeated in 2020, many of the opposition parties would

have disappeared after 8 years of lack of domestic funding, leading possibly to consolidation of the positions of the GD-DG for several years.

In addition, the initiation goals of the reform were not reflected in the electoral system to be applied from 2020 elections, but in the proportional system from 2024. The fact that this delay was due to the position of the majoritarian deputies that felt threatened by the reform shows the cost-benefit calculations of the domestic actors. The desire to retain the political control of the system by the majoritarian deputies, which in their majority were from the governing party, led to their negative assessment of the consequences of this reform in terms of their preferential fit. As a consequence, the reform process developed in a very protracted way, leading to increased antagonism and polarisation between the GD-DG and the opposition.

Consequently, domestic actors affirmed and criticised that this was *de facto* a one-party Constitutional amendment (OC-Media, 2017). Such statements illustrate in addition to the conflictual dynamics in the Georgian policy-making, the sense of lack of equal playing field between the different parties. This perception of lack of equality is a consequence of the use of institutional norms for strengthening or retaining power positions. Secondly, these dynamics of the institutional reform and what is perceived as the institutionalisation of unjust and partial rules appear to contribute to the loss of legitimacy of political parties, while strengthening the trends of unconventional participation and civic unrest. This seems to be a shared features both for the cases of Armenia and Georgia. The successful development of the reform and its consensually-accepted outcome was possible due to the pressure exerted by international actors and the demands of the recurrent street protests during 2019 and 2020.

Regarding the equality and freedom of the actual elections, the 2018 Presidential elections will be considered here, given that the recently adopted reform will be implemented only in 2020 parliamentary elections. Some of the most concerning dynamics of the 2018 elections refer to the abuse of administrative resources which led to blurred boundaries between the ruling party and the state institutions, raising in this way significant concerns regarding the equality between the candidates. The public welfare benefits and the private debt relief are seen as a large-scale vote-buying by domestic and international observers, which affects very negatively the equality between candidates in Georgia. The capacity of Ivanishvili to cover so significant campaign expenses shows the situation of extreme inequality between candidates in which elections take place in Georgia.

In addition, the presence of complicated schemes for controlled-vote appear attack against the individual freedom of the citizens, while increasing the inequalities between electoral candidates. Interestingly, similar practice was denounced in Armenia as a serious

violation of the voters' freedom and the candidates' equality, increasing the possibility of one candidate for achieving greater electoral support. Importantly, however, according to the OSCE/ODIHR the reports of controlled vote referred both to the UNM and the GD-DG. The presence of strong opposition which has the capacity to exert pressure on citizens in one of the main factors which differentiates Armenia and Georgia. In the case of Georgia, the use of such measures by both incumbent and opposition increases the polarisation in the country. As in Armenia, the complaints regarding these violations were rejected and no sanctions were enforced, leaving many citizens and candidates in a more vulnerable position in terms of their rights and the equality of the process. Consequently, this implementation of the electoral legislation shows that weak Rule of Law in the country leads to many negative consequences for the dimensions of electoral accountability, freedom and equality.

In conclusion, the 2017 Constitutional reform with the relevant amendments negotiated in 2020, provides better conditions for the more equal and free exercise of citizens' political right through electoral accountability. However, the reform process and 2018 elections show the existence of great inequalities between political parties and citizens. The use of state institutions, procedures and private resources for consolidating political power is further weakening the Rule of Law in the country, leaving the citizens in vulnerable position. In addition, the use of the electoral system as means for strengthening party-specific positions has also contributed for the citizens' dissatisfaction with the institutional and party system.

## ***VI. CONCLUSIONS ON GEORGIA***

The evolution of the reform in electoral accountability in Georgia also shows the interaction of this dimension with the Rule of Law, political competition and participation. The Table 2 below shows a summary of the main developments in the reform process. The reform process illustrates how the dominant trend of competition is reinforced by the electoral system. The efforts put by the governing party in guaranteeing the mid-term continuity of the mixed electoral system through 2020 elections, show the way in which domestic political actors intend to provide mid-term guarantees to their power positions in the country. This resistance towards the adoption of the proportional system is the reason for the protracted and polarised features of this reform process. This reform has been discussed since early 2010s and with a lot of domestic and international pressure will be used for the first time in 2024.

In addition, the reform process until the adoption of the Constitutional amendment in 2017 confirmed the dynamic of domestic competition and participation that was observed in previous chapters for Georgia. The Constitutional Commission that was initially nominated by

the Chairperson of the Parliament had a formally balanced configuration, which however did not allow the members with diverging opinions to promote any changes in the electoral system supported by the incumbent. In spite of the boycott and the opposition of parties and civil society organisations, the Commission approved a draft amendment which was very criticised by domestic and international actors. As in the 2010 constitutional reform, the lack of consensus-building led to delegitimization of the reform process. The majority in the Parliament allowed the ruling party to adopt the reform on its own. This decision-making dynamic increased the social and political polarisation in the country. The lack of engagement in dialogue and the right to voice one's perspective was a defining feature for Georgian political competition and participation that was relevant also in the 2010 Constitutional reform

This dynamic together with the reduced trust in the political parties as intermediary institutions in the political system, led to the increased legitimacy of unconventional participation, as street protests. This social participation was very effective in putting pressure on the reform processes, while adopting a very distanced position even from the opposition parties. Such movements acquired great importance in the period of 2019 and 2020, which shows that one of the main weaknesses of the political system is the low level of development and capacity of negotiation and consensus-building of Georgian political parties. In addition, the informal processes that blur the boundaries between state, public and private domains lead to the subordination and use of the political institutions and rules in the benefit of specific political parties. This aspect affects negatively citizens' equality and freedom, as well as the legitimacy of institutions and political parties. The weakness and personalist features, as well as the polarisation of domestic competition continue to pose persistent challenges for deepening democratic quality. The electoral system had a distorting role that contributed for this trend over time, reinforcing the zero-sum relations between political parties in a country with conflictual political culture. The experience of the negotiations that took place in 2019-2020, however, shows that this dynamic can be reversed and consensus between political parties is possible. The adoption of proportional system is expected to have a positive impact on these dynamics. However, it is essential that the Rule of Law weaknesses be also addressed.

The role of international actors is key in the electoral reform in Georgia. At first, in spite of the high level of pressure exerted by the Venice Commission on Georgian authorities, it had only limited success in improving the quality of the electoral legislation and for effectively promoting more open negotiations between political and social actors in Georgia. Therefore, the overall assessment of system to be applied in 2024 was enough for the government's ambitions in terms of external legitimation of the process. However, when the protest emerged

in 2019 and 2020, international actors showed greater political engagement and conditionality was actively applied. This was a key element which eventually influenced the consensus regarding the 2020 elections. In this sense, the interactions and collaboration between domestic civil society organisations and international actors is key in terms of information exchange, legitimisation and provision of common platforms for political negotiation. Therefore, it is possible to see how domestic organisation recur to international actors as a strategy to put pressure on the state authorities. On the other side, internal actors provide legitimisation and funding opportunities for developing a critical domestic civil society.

In this sense, it is essential that international actors, as the EU, US and the Council of Europe (together with the social protests) managed to influence the cost-benefit calculations of the ruling party. Interestingly, this process showed that external legitimisation of the process does not end with norm resonance and salience, but the use of negative conditionality was required in order to change the reform dynamics. Specifically, some of the arguments used by domestic actors show that more than the normative side of electoral reform, what was at stake both for the government and the EU was the domestic and international image and reputation of Georgia as a democratic success story. For the GD-DG the compliance with this image is necessary for its electoral support and for receiving external funding, while for the EU, the loss of a success story would compromise the whole Eastern Partnership endeavour. Therefore, the citizens support and the international pressure were the key variables that influenced the decision-making process and outcome of the electoral reform in Georgia. This last phase of the negotiation therefore successfully brought greater equality to the reform process.

On the other hand, the influence of Russia in Georgia is limited and focuses on imposition of the borders, the leverage of trade and tourist relations. In terms of linkage very complex networks and relations between Georgian and Russian conservative factions have been developing in the last years. The most obvious effect of these relations is the polarisation of the society between the liberal pro-EU and the conservative pro-Russian factions. It is important that the values have become a field of struggle for preserving Georgian culture from the negative influence of the EU. The 2019 protests, however, have shown the low level of tolerance of Georgian society towards specific figures from Russia's elite. Furthermore, the external influence acquires different dimension when it relates to domestic trends of political competition, due to the consequences of this aspect for the electoral outcome

<b>Independent variable</b>	<b>Contextual propositions 2012 - 2016</b>	<b>Causal propositions 2016 - 2019</b>	<b>Outcome 2020</b>
Secessionist conflicts State existence threatened by Russian military presence;	<b>Mixed electoral system which benefitted the most voted party</b>  <b>Consensus</b> on adoption of a fully proportional system	Constitutional reform <b>delays the proportional system until 2024 (with 5% threshold and prohibition of electoral blocks)</b> a	Agreement among all parties for the adoption <b>for 2020</b> of mixed system with <b>120 proportionally elected MP and 30 majoritarian MP, 1% threshold.</b>
Medium ethnic diversity  Political culture based on conflict	<b>Political competition</b> GD-DG 2016 constitutional <b>majority of 76,7% of MP (with 48,7%). Single-party-majority</b> governments for 3 out of 4 mandates  <b>Fragmented opposition</b> after 2016 elections	SCC dominated by the GD-DG, due to <b>opposition boycott, due to the lack of consensus of the draft</b>  <b>Majoritarian deputies oppose</b> the proportional system	<b>Use of state and private resources</b> in electoral competition. High <b>polarisation</b> <b>Domestic protests</b> gain importance and show <b>low levels of trust in political parties.</b> <b>Parties reach consensus</b> due to domestic and international pressure
Former successful Rose Revolution	<b>Low social trust in political parties</b> and institutions	<b>Civil society votes against</b> the electoral reform and <b>exert pressure on international</b> actors.  The Church and nativist groups and parties oppose EU and the UNM	New youth movements and social protests demand the adoption of <b>the proportional system from 2020.</b>
EaP created, AA/DCFTA negotiations	<b>External legitimacy</b> of the process (Venice Commission)	The Venice Commission approves that the <b>2024 system will be in full conformity.</b> Limited effectiveness of international pressure on the final text of the reform. <b>Pro-EU orientation</b> in the Constitution.	<b>2019-2020 very effective use of conditionality and harsh criticism</b> against the government led to change in the electoral system for 2020.
Borderisation, creeping occupation	GD-DG acts for the <b>normalization</b> of relations with Russia. UNM sees Russia as a <b>threat to Georgia's</b> state and identity	<b>Trade relations</b> resumed Relations with conservative actors in Georgia	<b>Russia airlines and tourist activists halted after the protests in Georgia</b> that are seen as anti-Russian.

Table 10. Reform process of electoral accountability in Georgia.

## ***XII CHAPTER MOLDOVA***

### ***I. REFORM PROCESS IN MOLDOVA***

Moldova is one of the few post-Soviet countries that adopted a proportional electoral system since the beginning of its independence. In early 2010s a change to a mixed electoral system was discussed on two occasions, leading to a third successful attempt in 2017. The reform of the electoral code adopted in July 2017 shifted from a fully proportional to a mixed system. In a single round 50 MP are elected using a proportional method in a single nationwide constituency and 51 MP by a majoritarian one in single member constituencies. The reform process and outcomes were extensively criticised by domestic and international actors.

The 2013 and 2014 attempts to adopt a majoritarian electoral system were negatively assessed by the Venice Commission. They failed, due to disagreements within the Alliance for European Integration (AEI). The need to reform the electoral code re-emerged in the public debates in February 2017, due the past international reports on the importance of providing the required guarantees of “transparency, integrity and accountability of campaign finances” (Venice Commission, 2017a: 7). Against this background, the ruling political party suggested a transition to a majoritarian electoral system. In March 2017 the leader of the Democratic Party of Moldova (PDM), Vlad Plahotniuc argued that a fully majoritarian system will allow voters “to choose the MPs they know”, “to withdraw the MPs they chose [...] and elect others”, while “Moldovans from the diaspora will be able to choose their own representatives” (IPN Moldova, 2017p). Approximately 10 days after this statement the PDM introduced in the Parliament a draft law for the adoption of the First-Past-The-Post system (Republic of Moldova/Venice Commission, 2017b). This proposal was discussed at first reading in the Parliament in March, where civil society organisations voiced their concerns regarding its constitutionality of certain provisions, as the revocation of MPs (IPN Moldova, 2017m).

However, the leader of the Socialist Party (PSRM) and the President of Moldova, Igor Dodon, rejected the possibility for a transition to a fully majoritarian system and in mid-April the PSRM introduced a draft law for the adoption of a mixed-electoral system (IPN Moldova, 2017q). The new system would consist of 51 MP chosen by party lists and 50 MP elected in majoritarian constituencies, and some representatives would be from Transnistria. In May 2017 the two drafts introduced by the PSRM and the PDM were discussed at first reading in the Parliament and the PSRM draft law was supported by 74 MP from PDM and PSRM. Therefore, the PSRM draft was the basis for the final version of the electoral amendment adopted by the Parliament, making it in this way a big victory for the PSRM (IPN Moldova, 2017l, 2017c).

In summary, this reform was a combination of two alternative drafts for the electoral reforms and the final document was based in its majority on the PSRM draft, with the exception of two minor amendments (Nodia, 2017; Ruthrauff, 2017a; Venice Commission, 2017a). The main goal of this draft was to “combine the advantages of both the majoritarian and the proportional system” (Venice Commission, 2017a: 9). The draft sought to remedy “the perceived distance between elected representatives and their constituents”, to identify “new political leaders that will diversify political leadership and improve national decision-making” and “provide fair representation of all citizens [...], including those from the Transnistrian region and those from abroad” (Venice Commission, 2017a: 9).

However, the threshold applied to proportional representatives remained relatively high - 6% for political parties, 9% for coalitional blocs of two parties, and 11% for blocs of three parties (Republic of Moldova/Venice Commission, 2017a). In addition, the responsibility for the delimitation of the single-member constituencies, including Transnistria and Gagauzia, was passed to the Central Electoral Commission, in spite of its past objections to such responsibilities (Bakken and Sorescu, 2017; Republic of Moldova/Venice Commission, 2017a). No significant improvements in the field of campaign finances accountability and control were included in the reform in order to address the past criticism of the Venice Commission. The Venice Commission issued a critical opinion of this draft reform adopted in the Parliament, while recognising that this is a sovereign choice. In addition, the EU increased the conditionality of its support, based on the respect of the multi-party system, a reference to the electoral reform. In spite of these negative reactions and of the calls for third reading, the Parliament adopted the reform at its second reading in July 2017 (Ruthrauff, 2017a).

This last version of the electoral reform added minor changes, which did not address the substance of the recommendations of the Venice Commission. In spite of the reduction of electoral threshold for blocks to 8% and the 6% for parties, it was still considered a high restriction for the access to parliamentary representation. In addition, the Venice Commission criticised the procedure for designation of the specialised commission for the delimitation of new constituencies, due to the high discretion of the government. Therefore, the majority of the recommendations issued by the Venice Commission in June 2017 remained valid (Venice Commission, 2018a). As described below these and other negative developments in the field of democracy and rule of law led to a significant reduction of the funding provided by international organisations, including the EU and World Bank. However, this strict conditionality did not lead to any changes by the PDM in the electoral reform adopted.

## ***II. IMPLEMENTATION OF THE REFORM***

The February 2019 parliamentary elections were the first occasion when the new electoral code was implemented. They took place in the context of reshaped social cleavage, where new, strengthened and clearly identified pro-Russia and pro-EU political parties became active. The credibility of the pro-EU ACUM coalition was increased, due to the fact that Andrei Nastase had won the elections for Chisinau mayor in 2018 and did not take the position due to the unjustified invalidation of the elections by the Supreme Court. This decision led to the application of negative conditionality by EU institutions. On the other side, the position of the Socialist Party (PSRM) was strengthened after the one- million theft from Moldova's bank system and after the president Dodon managed to reverse some of the negative measures adopted by Russia. A significantly weaker PDM adopted a populist pro-Moldova discourse, which claimed to support the independent development of the country.

The electoral campaign illustrated the main weaknesses of the electoral legislation that were already underscored by the Venice Commission, as the lack of specific regulation of the use of administrative resources, the “regulation of third-party expenses”, the need to enhance the campaign finance oversight. Vote buying included provision of gifts, and products including discounts in supermarkets for which the reportedly the customers had to provide their personal data. In addition, misuse of state resources was most frequently reported in the case of PDM, and after this for the PSRM. However, given the lack of regulation on these aspect, all the complaints on these topics were dismissed without being considered. It is possible to conclude that the loopholes in the regulation led to limitations in the equality between candidates during the campaign period (OSCE/ODIHR, 2019d).

In December 2018, a couple of months before the 2019 parliamentary election, two Constitutional Court judges resigned and three new judges were appointed in a swift and non-transparent procedure, which raised serious concern regarding the Court independence. Among the three newly appointed judges were the former Prosecutor General, which was included in the 2010 secret agreement as a PDM nomination and a “deputy from the Democratic Party and chair of the parliamentary Legal Committee for Appointments and immunities” (Legal Resource Center from Moldova, 2018b). The other two Judges had been PDM members (Legal Resource Center from Moldova, 2018a). In addition, they “have previously been Prosecutor General, director of the intelligence service and chair of the legal committee of Parliament (International Commission of Jurists, 2019). All these positions are defined by their political links to the government and to a culture of obedience and discipline, rather than impartiality.

These nominations were strongly criticised by domestic and international actors, as they were seen to be linked to the electoral process, given that the Constitutional Court is in charge of confirming elections results and decides regarding their factual circumstances. The Venice Commission pointed that this “risks compromising the principle of judicial independence” (Venice Commission, 2000: 8). In conclusion, these aspects affected negatively the “transparency, integrity and accountability” of the electoral accountability and significantly reduced citizens’ trust in the electoral processes (Venice Commission, 2017a: 7).

The bias of the Constitutional Court towards the PDM was demonstrated when in 2019 it tried to prevent a coalition agreement between the PSRM and ACUM. As a result of the February 2019 elections, the PSRM became the first parliamentary force with 35 deputies, while the PDM was represented in Parliament by only 30 deputies, the bloc ACUM (Maia Sandu-Andrei Nastase) by 27 deputies and the party Sor by 7 deputies (OSCE/ODIHR, 2019d). This electoral outcome opened the door to long and complicated coalition negotiations. In June 2019 the Pro-EU ACUM and Pro-Russia PSRM agreed on a coalitional government against the PDM oligarchic trends with the support of both the EU and Russia. As a reaction the PDM claimed that they have missed the deadline with one day for convening a new government and that the President Igor Dodon should have called new elections. The Constitutional Court availed this claim, dismissed the President Dodon and installed the former Prime Minister Filip, who promptly dissolved the Parliament and called new elections. This led to a deep institutional conflict between the Constitutional Court and the Parliament. The Venice Commission concluded that “[t]he conditions for the dissolution of the Parliament clearly did not exist” (Venice Commission, 2019: 16). The Venice Commission understood it intervened in an exceptional situation when there is a risk “the robustness of State Institutions in the country in line with the Constitution be seriously undermined and the democratic functioning of state institutions be irreparably compromised” (Venice Commission, 2019: 17).

After international pressure (from the EU, Russia and the USA) the coalition government of PSRM – ACUM was established, and the Constitutional Court invalidated its previous decision. This government demanded and received the resignation of all the Constitutional Court judges due to their lack of legitimacy (RFE/RL’s Moldovan Service, 2019). This intervention of the Constitutional Court illustrates clearly the blurring boundaries between institutional and party interests and the weak Rule of Law. As described in Chapter V selective justice in terms of investigation, prosecution and conviction has been reported to a large degree in the period after 2016 (Transparency International, ADEPT, Viitorul, 2017).

The unexpected agreement between PSRM and ACUM was followed by the conformation of the coalition government in which key role had the pro-EU reform-oriented ACUM. Maia Sandu assumed the Prime Ministerial position, while Andrei Nastase became the Minister of Interior. In addition, the criticised electoral reform was reversed, which shows that EU conditionality was not effective with the PDM, but did contribute to strengthening the pro-EU reform-oriented elite in ACUM. As a consequence of these and other measures (see Chapter V) as soon as July and October 2019 the budget support and macro-financial assistance was released by the EU. The budget support allows the politicisation of the EU support, as a political gesture in order to provide motivation for reforms in Rule of Law (Interview 83). In addition, the strict conditionality applied in 2017 and 2018, has been identified as key for the reform process (Interview 74) and for political competition. The differential empowerment of pro-EU and pro-Russia domestic actors and the isolation of the PDM oligarchic government increased geopoliticisation and polarisation of the domestic discourses. This led to a conformation of new government composed of pro-EU and pro-Russia political parties, which prioritised the end of PDM political control of the institutions. However, the increased incentives provided by the EU and Russia also increased the competition between these forces and potentially undermined the effective consensus-building.

The competition between the coalition members ACUM and PSRM became obvious during the mayor elections in Chisinau that took place in November 2019. The PSRM candidate received increased support (52% of all votes) against the previously victorious (in 2018) Andrei Nastase (48% of all votes). Shortly after these elections the coalitional government abandoned power, due to principled differences in the field of Rule of Law. However, it has been notorious that the PSRM-ACUM coalition challenged the main geopolitical divisions in the country during its government that lasted less than six months. Its lack of continuity was due to its composition of two competitors, which had principles and interest-based differences regarding the national institutions. The reforms of this government showed that the EU conditionality is effective with reform-oriented elite as the ACUM members that achieved certain level of institutional reform. In addition, the competition

### ***III. CONTEXTUAL FACTORS***

The specific features of Moldova's electoral system and its reform process can be partially explained by the contextual factors in which the reform process took place. Moldova is the only country that used a proportional system with one national constituency during most of its independent development. The most frequent changes in the electoral code referred to

complementary aspects, as the threshold. It was set on 4% in 1994; on 6% in 2001; again 4% in 2009 and 6% in 2014. The increase of the threshold to 6% in 2001 led to 25% of the so called wasted-votes, which were distributed equally among all parties qualifying for the Parliament. (Ruthrauff, 2017a). In addition, the electoral system reflects the more decentralised political system and fragmented national identity, divided among those that consider themselves pro-Romanian, Moldova and anti-Romanian (Popescu 2012: 46). This complex social structure finds expression also in the foreign policy preferences of the population and translates in a more complex, fragmented and in occasions polarized party system with systemic institutional deadlocks. The system of cleavages revolves around the foreign policy preferences of the population, the inter-ethnic relations and the national identity. In addition, the frequent electoral changes indicate its instrumental use by domestic actors in their benefit.

The political system in the 2010s was dominated by the Alliance for European Integration (AEI) (in government between 2009 and 2013) and the Socialist Party (PSRM), which clearly expressed its support for closer relations with Russia. After 2015, however, the members of the AEI were discredited and loss of credibility, due to their functioning as “clientelist vehicles of powerful individual leaders” that contributed to state-capture (Berglund et al. 2013: 757; Tudoroiu 2015; Jagland 2015). In addition, Vlad Plahotniuc a strong oligarchic leader retained large portions of informal power and influence over the Democratic Party (PDM) structure and state institutions, leading to increased integration between informal networks, political parties and state institutions. Unlike Georgia, Moldovan neopatrimonial networks depend on domestic economic activity. Connectedly, private and public interests intertwine to such degree that some analysts have described the AEI political elite as “businessmen who use politics exclusively as an instrument to promote their illegitimate economic interests” (Glasul 2013; quoted in Tudoroiu 2015: 671).

Furthermore, the immediate period before the electoral reform (2015 and 2016) was defined by several corruption and money-laundering scandals that re-structured the party system and its relations with international actors. In 2015 the “theft of the century” made public the disappearance of one million US Dollars from three commercial banks in Moldova (Alaiba, 2017). This corruption scandal affected deeply domestic political competition. Social protests dominated most of 2015 and 2016, while the conflict within the AEI coalition increased and its legitimacy reduced. In February 2015, the PDM with only 19 MP, reached parliamentary majority with the support of “13 deputies from the PL, 14 ex-communist deputies, 8 deputies from the PLDM and 2 former PLDM deputies” (Levcenco, 2016; Alegeri.md, 2019).

In parallel, the coalition ACUM united the political initiatives of the former prosecutor and leader of the social protests, Andrey Nastase and former member PLDM minister – Maia Sandu. ACUM emerged as a pro-EU opposition party that was committed to address corruption through effective reforms. Given the loss of legitimacy of the AEI members after the corruption scandals, these leaders became the main pro-EU party. Given the misuse of administrative resources against the leaders of ACUM, as was the case in the municipal elections of Chisinau in 2019, this party was seen as an actual alternative to the delegitimised members of the AEI, as the governing PDM.

On the other hand, the former communist party fragmented in two factions: the PCRM (with 21 MP) and the PSRM of Igor Dodon (with 23 MPs) (Alegeri.md, 2019). The position of the Socialist Party (PSRM) was strengthened after the one-million theft from Moldova's bank system. The popularity of the pro-Russian candidate, Igor Dodon, and the alignment with the Eurasian Economic Union clearly increased after the 2015 and 2016 corruption scandals. In 2016 38% of surveyed supported EU membership, while 40% the EEU membership (Baar & Jakubek 2017: 86). Therefore, the corruption scandals affected negatively the image of the EU and reduced the domestic support of EU membership, while the support for EEU membership increased. The 2016 election of PSRM President Igor Dodon was an expression of this process and opened an institutional path for closer Moldova-Russia relations (Radio Free Europe, 2017b). In addition, his election led to an effective cohabitation between pro-EU government and pro-Russian president. According to some domestic observers, the dynamics developed during this period led to an interest-based cooperation between the PDM and the PSRM, in spite of their diverging positions in key aspects. The 2017 electoral reform is an example of such episodic cooperation, when a PDM majoritarian draft, and the PSRM mixed electoral draft were merged (Nodia, 2017; Ruthrauff, 2017a).

In conclusion, the complex cleavage structure and the national identity of Moldova was accompanied by almost 30 years of use of the proportional electoral system. Briefly before the electoral reform the trends of competition changed in the country. The PDM government successfully managed support of diverse multi-party group of members of Parliament. However, as other members of the AEI coalition, the PDM (led by the oligarch Plahotniuc) had lost legitimacy after the 2015 corruption scandals. New pro-EU political parties emerged around the leaders of social protests, Maia Sandu and Andrei Nastase. The PSRM and its leader Igor Dodon clearly benefitted from increased support after the corruption scandals.

#### ***IV. DOMESTIC PARTICIPATION AND COMPETITION***

Initially, the 2017 electoral reform came as a response to domestic and international claims of the need to improve the legislation. The Venice Commission and the OSCE had reported the need to guarantee more transparent and accountable campaign and election procedure. In addition, civil society organisations claimed that the 2016 Presidential elections showed that “the legislation needs to be reviewed in order to improve and democratize electoral procedures” (IPN Moldova, 2017d). They requested the “Parliament to constitute [a] working group” in order to draft, publicly discuss and amend the regulation of candidates’ registration, the Broadcasting Coordination Council, campaign financing, elections management and dispute resolution (IPN Moldova, 2017d).

The 2017 electoral reform was initiated by the PDM, but *de facto* is an example of an episodic cooperation between the PDM and the PSRM, as it was a combination of the drafts introduced by these two parties (Nodia, 2017; Ruthrauff, 2017a). The trends of participation and competition will be studied through the affiliation networks of the MPs that drafted the two alternative texts. This approach was chosen, as there was no specific commission working on the reform. In addition, the texts were merged in the Parliament and were adopted only after two readings. The Figure 23 below shows the affiliation network developed on the basis of the curricular data of all the PDM MP that introduced the first fully majoritarian draft, while the Figure 24 shows the affiliation network for the PSRM MP that introduced the mixed draft.

The affiliation network in Figure 23 does not include the Parliament and PDM nodes, which are obviously common for all the members of the network. The exclusion of these two nodes makes clearer the affiliation of the MP with other institutions or organisations. In this sense, it is notorious that the Communist party of Moldova (PCRM) is the first most represented organisation which is shared by the highest number of MP included in the PDM affiliation network. Interestingly, the PCRM was the first political party to which many of the PDM and PSRM members were affiliated. This shared origin is also illustrated by the fact that the Zinaida Grecea, the leader of the PSRM group of deputies (in Figure 24), was also a member of the PCRM before its division with the PSRM. These circumstances further illustrate the shared roots of PDM and PSRM deputies that introduced the draft texts of the electoral reform. It also explains why they are perceived to collaborate on domestic reforms, in spite of their contrasting foreign policy stances.



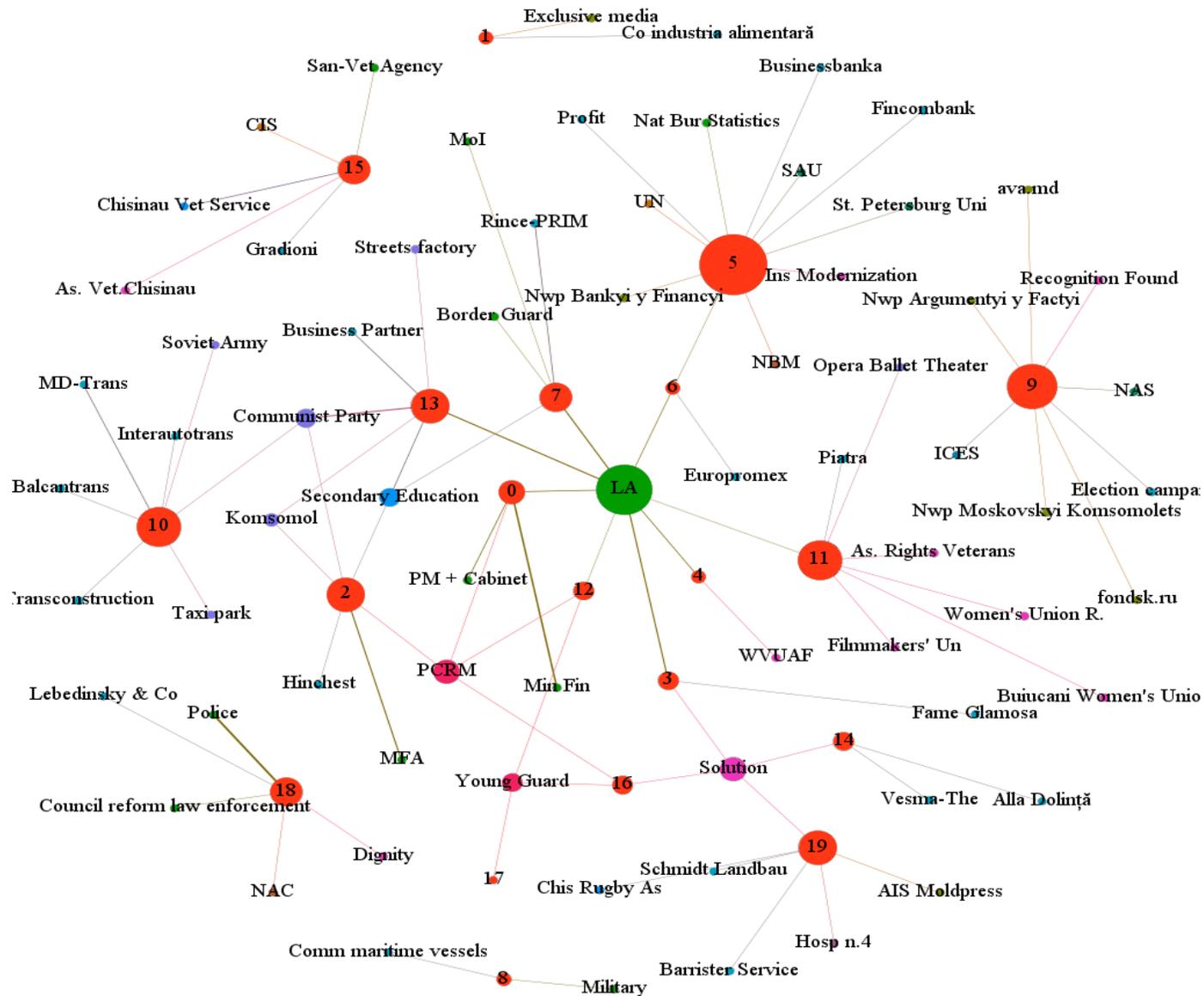


Figure 24. Affiliation network PSRM MP drafting electoral reform 2017 Moldova

Furthermore, the Figures 23 and 24 illustrate that the PCRM is much more represented in the PDM network (12 nodes) than in the PSRM one (4 nodes), which also shows that the party system in Moldova has a more fluid membership in comparison to Armenia and Georgia. The 12 PDM MP that in the past belonged in the PCRM were among 14 MP whose support was essential for the election of the PDM-led government in 2016. The electoral reform is the second occasion when these former PCRM deputies provided instrumental support to the PDM (Anticoruptie.md, 2016b). In conclusion, the PDM and PSRM appear to share more than their opposed electoral positions would suggest, as the support provided by the 14 “refugee deputies from the PCRM” was instrumental (Anticoruptie.md, 2016b). The central role of this support raises serious doubts if it was just an episodic cooperation and domestic observers have suggested these 14 PCRM deputies have received bribes in exchange of their support to key PDM initiatives. Journalists and analyst studied the properties and wealth of these 14 MPs in order to illustrate what could been these bribes (Anticoruptie.md, 2016b). Even if these speculations are very difficult to prove, these developments indicate high level of informality and fluidity of the political competition in Moldova.

The affiliation networks above show that Local Authorities (LA) are the second most represented institution in the PDM network and the first in the PSRM network. This circumstance illustrates the career track of former PCRM deputies, where the entry point for politics is locally elected positions. Lastly, a relevant informal link in the PSRM network is also shown. Importantly, four members of the PSRM network have belonged to the Foundation Solution which is the charity of Igor Dodon. The links of such a non-profit organisation to the professional past of several deputies that have drafted the electoral amendment is significant indication of the links relations political parties and private entities.

Importantly, in this period the PDM (2016-2019) was discredited as a pro-EU party, due to the limited outcomes of the reform process and the reduction of the EU funds provided to the government. In order to regain the voters’ support the PDM put special efforts in adopting the position of a pro-EU alternative, through the intensification of a declarative pro-EU and anti-Russian rhetoric. In 2017 it adopted a series of focalised measures against Russian representatives in Moldova. For instance, in May five Russian diplomats were expelled from Moldova, leading to increased geopolitical tensions in the region (BBC, 2017). In addition, the Russian Deputy Minister Dimitri Rogozin and special representative for Transnistria was prevented from landing in Chisinau and attending the anniversary of the deployment of Russian troops. As the conflict between Chisinau and Moscow escalated in August 2017 Rogozin was

declared *persona non-grata* in Moldova (Reuters, 2017). In addition, the PDM initiated a constitutional consultation and legislative procedure for the inclusion of the EU integration course in the Constitution. Other pro-EU parties as the PLDM claimed that this did not correspond with the real PDM intentions, as it does not comply with key Rule of Law norms (IPN Moldova, 2018a). The PDM accused the new pro-EU parties as PAS and PPDA for acting against the EU integration, due to their criticism of the Rule of Law (Cenușa, 2017).

On the other hand, the increased geopolitical tensions in Moldova also allowed the PSRM and the President Dodon to position himself clearly against the EU and in support of Russia. Claims for the involvement of Western countries was an explanation that the President frequently used as the reason for certain measures adopted by the government (BBC, 2017). When studying specifically the electoral reform process the PSRM rejected the fully majoritarian system, as this would subordinate the Parliament and the deputies to the political regime, giving it the opportunity to control the elections and the candidates. Secondly, they pointed that this step “endangers the existence of parties and parliamentarism in Moldova” (IPN Moldova, 2017t). The PSRM suggested the creation of polling stations and inclusion of the diaspora, and the “involvement of the citizens from Transnistria” (IPN Moldova, 2017i). Eventually, in mid-April the PSRM introduced the second draft law on the mixed-electoral system (IPN Moldova, 2017q). Importantly, most of the suggestions of this draft were included in the final version of the document adopted by the Parliament (IPN Moldova, 2017l).

On the other hand, the newly-established parties that were established after the 2015 corruption scandals and street protests explicitly opposed the 2017 electoral reform. Specifically, these were the Dignity and Truth platform (PPDA), led by Andrei Nastase and the PAS party led by Maia Sandu, that took part in the brief 2019 government with the PSRM. One of the first occasions of cooperation between the leaders Nastase and Sandu was in opposition to the 2017 electoral reform. As early as February 2017, the leader of PPDA platform (Truth and Dignity), Nastase argued that this reform “is dictated by the interest to hold power at all costs”, given that “the PDM does not have chances to return to power” and the majoritarian system would allow it to do so (IPN Moldova, 2017a).

On a joint conference the leaders of PPDA (Nastase), PAS (Maia Sandu), and the Liberal Democratic Party (Viorel Ciobutaru) argued that the PDM has lost the support of citizens’ and intends to change the electoral system in order to benefit from the majoritarian outcome (IPN Moldova, 2017a, 2017k). They spoke as representatives of the opposition parties and positioned themselves “categorically against this attempt to compromise and distort the

voters' wish, which hides the intention of the Plahotniuc-Dodon clan to remain in power" (IPN Moldova, 2017k). Interestingly, even before the discussion of the draft electoral code in the Parliament, the leader of the PPDA, Andrei Nastase, argued that in order to create a "broad political consensus", the PDM "actually aims to implement the mixed electoral system, while the bill to introduce the uninominal voting system is just teargas" (IPN Moldova, 2017f). Such a clear vision of the actual intentions behind the political negotiations, clearly illustrates the general understanding of the informal trends within Moldova's political system.

Even the civil society organisations that initially called for increasing electoral transparency, opposed such amendment and announced that they will boycott the working group on the reform if it focuses on the adoption of a majoritarian system (IPN Moldova, 2017b). Furthermore, after the first reading of the amendment, civil society organisations and opposition leaders led social protests in front of the Parliament. Some of leaders of these protests were representatives of the Liberal-Democratic and of the platform PAS (Maia Sandu) and civil society representatives as Transparency International (IPN Moldova, 2017r). In addition, after the electoral reform was adopted one of the most important organisation, Promo-lex, issued a statement claiming that none of the gaps and suggestions it had identified was tackled by the government (Promo-LEX Association, 2018).

## ***V. INTERNATIONAL FACTORS***

The need for electoral reform was based to great extent on the expert recommendation of the Venice Commission and OSCE. As early as 2013 the Venice Commission reported that an electoral reform was required in order to improve campaign financing and accountability. The main concerns in 2017 were the lack of "adequate time for effective oversight of financial reports, [...of...] proportionate sanctions for campaign finance violations during signature collection and the campaign" and lack of any measures against "third-party campaigning" (Venice Commission, 2017a: 7). These aspect were essential for ensuring "transparency, integrity and accountability of campaign finances" (Venice Commission, 2017a: 7).

In addition, these topics were raised in February 2017 in the context of an international conference<sup>24</sup>, which analysed the lessons to be learnt from the 2016 Presidential elections and was organised by the Central Electoral Commission and the Council of Europe. On this occasion, the President of the Constitutional Court requested a reform of the Electoral Code in

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<sup>24</sup> The conference was entitled "Presidential elections in the Republic of Moldova 2016: analysis, conclusions, recommendations and steps to be followed"

order to include “separate provisions for each type of elections”, improved regulation of the challenge examination procedures and diaspora voting (IPN Moldova, 2017e). Therefore, the need of the reform of the electoral regulation was a long-term recommendation of international organisations as the Council of Europe that also provided a platform for the discussion. In addition, when the discussions on the electoral reform began, the President of the Venice Commission, Gianni Buquicchio pointed that the “amendment of the electoral legislation is necessary given the deficiencies in [its] functioning” (IPN Moldova, 2017u). He also added that “any electoral amendment should be made at least a year before the election”, as a result of a broad political consensus reached through “a wide discussion and debate process with the involvement of the authorities, political parties and civil society” (IPN Moldova, 2017u). These three conditions were pointed out even before the beginning of the process.

The first Venice Commission opinion on the electoral reform was issued in June 2017 and focused mainly on the draft amendment that merged the PSRM and the PDM proposals. This opinion underscored the three conditions mentioned by Buquicchio regarding the need of social and political consensus reached through broad national discussion. In addition, the Venice Commission report reflected the criticism described above of domestic civil society organisations, pointing that “the procedure for the adoption of the draft in first reading [...] was very swift without opportunity for meaningful and inclusive parliamentary debate which is required for such a fundamental change” (Venice Commission, 2017a: 5).

In addition, the Venice Commission noted that the mixed system could cause “independent majoritarian candidates [...] to [...] be influenced by businesspeople or other actors who follow their own separate interests” (Venice Commission, 2017a: 5). Furthermore, it argued against the high thresholds, the responsibility of the CEC and the lack of detailed criteria for the definition of single-mandate constituencies (including Transnistria and Gagauzia), given the possible influence on it by the government. Besides, the rights of the diaspora are subject to certain restrictions and the legislation lacks any specific measures to guarantee equal women representation (Venice Commission, 2017a). The draft did not address any of the previous concerns, as the lack of “effective oversight of financial reports, [...] proportionate sanctions for campaign finance violations, [...] third-party campaigning” (Venice Commission, 2017a: 7). These aspects affected negatively the “transparency, integrity and accountability of campaign finances”, which additionally reduced citizens’ trust in the electoral processes (Venice Commission, 2017a: 7). In conclusion, the first Venice Commission report provided a very negative perspective of the draft amendments.

The EU conditionality was clearly linked to the compliance with the Venice Commission recommendations. The electoral reform was considered in the Joint Statement after the third Association Council meeting, the 31 March 2017, even before the introduction of the draft amendment. It was discussed as an “area of a key political importance”, while highlighting that it should “strengthen the principles of democracy in the country and should be made on the basis of a broad consensus amongst political forces, following a genuine consultation of civil society and in accordance with the recommendation of [...the...] Venice Commission, and the OSCE/ODIHR” (Council of the European Union, 2017). As a consequence, Moldova’s government “confirmed that the advice of international partners would be sought and followed and that changes would happen only following a comprehensive public consultation where all relevant political and civil society actors would be invited” (Council of the European Union, 2017). Undoubtedly, this consideration of the electoral reform in the framework of the Association Agenda reflects the EU’s concerns with Moldova’s level of compliance of international recommendations and the inclusiveness of the process.

In addition, in 2017 the conditions for the disbursement of the Macro-financial assistance (MFA) of the EU and the IMF were significantly reinforced under the influence of the European Parliament. The European Commission initially conditioned the granting of the MFA to the compliance and “respect for effective democratic mechanisms, including a multi-party parliamentary system, and the rule of law and guarantees of respect for human rights” (Muresan, 2017). After the suggestions of the MEP Sigfried Muresan these pre-requisites were applied to the release of each instalment of the MFA. The release of such instalments was subject to specific conditions that would be “properly assessed, [...and...] set out in a stringent and measurable manner” (Muresan, 2017). These requirements applied were introduced in parallel to the electoral reform and were supported by all European political groups. Furthermore, the MEP Andi Cristea pointed that even if the choice of electoral system is “an internal policy issue [...], there is common and assumed interest in the modernization and making of the Moldovan political class more responsible” (IPN Moldova, 2017h). Similar position on the need of consensus and broad consultations was underlined by the EU-Moldova Association Committee in May 2017 (IPN Moldova, 2017o). Domestic and international observers considered that the respect of multi-party parliamentary system referred to the positive evolution of the electoral reform.

The political conditionality of the EU was applied in a stricter way to the development of the electoral reform in Moldova. This perspective was reinforced by the adoption of joint statements of the European Parliament, the Council and the Commission in July and September

2017, two weeks before the final adoption of the electoral reform. This statement underlined that “a pre-condition for granting macro-financial assistance is that the beneficiary country respects effective democratic mechanisms, including a multi-party parliamentary system”. The Commission will monitor this compliance with “the recommendations of relevant international partners” (European Parliament, 2017). The pressure on the government also increased via diplomatic meetings. Meetings were organised with the Speaker of the Parliament, the Prime Minister of Moldova, ambassadors and representatives of the EU member states, the OSCE, the Council of Europe, the United States. On such meetings, the representatives of the government claimed that there was a “broad consensus reached on the bill to introduce the mixed-member voting system” (IPN Moldova, 2017j).

In conclusion, the adoption of the electoral reform in Moldova was accompanied by coordinated efforts in support of democratic reforms in accordance with the Venice Commission recommendations. Specifically, the way in which all EU institutions, including the Commission, the Parliament and the Council, acted clearly shows that the EU used all instruments at its access to exert influence on the electoral reform in Moldova. The EC used leverage via the MFA, as well as linkage regarding the Venice Commission reports, via regular diplomatic meetings and the normative action of the Parliament.

However, these efforts were not very successful. In July 2017 the Parliament adopted on second reading the amendment of the electoral code without any significant changes. One day after the vote, the EU High Representative and the Commissioner for Neighbourhood Policy expressed their support of the Venice Commission opinion and argued that “the proposed changes raise serious concerns regarding effective democracy in the current context” (EEAS, 2017). In addition, they referred to the “need to respect effective democratic mechanisms, including a multi-party parliamentary system and rule of law” in the framework of the MFA procedure (EEAS, 2017). The European People’s Party condemned “the parliament’s disregard of the recommendations of the Venice Commission” and called “the European Commission to stop any funding and re-evaluate the EU-Moldova Association Agreement” (IPN Moldova, 2017g). The second Venice Commission opinion (from March 2018) showed that most of its remarks were not remedied. The government’s control of the designation of the Commission for the constituencies, jeopardised its independence. In spite of having reduced the threshold for electoral blocks to 8% and the threshold for individual candidates to 6%, it was still considered high. Positive assessment received only the reduced limit of all campaign donations to 25% of the previous amount (Venice Commission, 2018a).

Consequently, the Multi-financial assistance of the EU, the IMF and the WB was put on hold in November 2018, due to “the ongoing deterioration of the rule of law and democracy in the country” (EU Delegation to the Republic of Moldova, 2018). The February 2018 Council Conclusions expressed “regret that the new electoral law did not address some of the key recommendations of the Venice Commission” (Emerson and Cenușa, 2018: 135). In addition, the European Council echoed the Venice Commission, when it stated that there is a “risk that majoritarian candidates may be influenced by businesspeople or other actors who follow their own interests” (Council of the European Union 2018: 3). The decision of the Supreme Court to invalidate the mayor elections in Chisinau won by Andrei Nastase also affected negatively the EU assessment. This Court decision was seen to pursue electoral goals (Tanas, 2018).

In addition, after a negative assessment of the compliance with the budget support conditions, the EU cancelled a “tranche of 28 million Euros for the justice sector” (Emerson and Cenușa, 2018: 135). In November 2018 the EU decided to recalibrate the funding provided to Moldova and “support projects that have a direct, positive impact on Moldovan citizens” (EU Delegation to the Republic of Moldova, 2018). The financial support of Moldova for the period 2017 and 2018 amounted to 106 millions Euros and would focus on regional socio-economic development through support to SME, civil society and local authorities, confidence-building measures, etc (EU Delegation to the Republic of Moldova, 2018). Therefore, the EU redirected the support from the state institutions to the citizens, business and CSO increasingly outside Chisinau. The conditions for the reinstating the multi-financial assistance included “credible, inclusive and transparent” elections in 2018, with “appropriate international monitoring, [...] level playing field for the opposition, including in terms of registration and in the media” (EU Delegation to the Republic of Moldova, 2018). Other conditions were the prosecution of the banking fraud, a “substantive judicial reform” and “the fight against high-level corruption” (EU Delegation to the Republic of Moldova, 2018). In conclusion, after the lack of democratic deepening as a result of the electoral reform, the EU has stepped up its value promotion with credible negative conditionality against discredited institutions in Moldova.

However, these measures did not lead to effective compliance with democratic norms, but stimulated a discursive change in the PDM. At the PDM Assembly in October 2018, Plahotniuc suggested a new fourth, pro-Moldova way “for solving the concrete problems of the people” (Publika.MD, 2018). In this way the PDM presents itself as an alternative to the three directions for the country’s development – “one is the way to the European Union, another it is the Eurasian way and the third way is the one of unification with Romania” (Publika.MD, 2018). In addition, the relation with the EU were politicized, as certain circles of the PDM party

defended that the EU after 2015 was not anymore a “reliable partner”, because it “started to implement [...] an unfriendly policy towards, towards Moldovan government of course, but this means towards Moldova” and “it supported explicitly the opposition, pro-right new opposition, pro-right pro-European right-wing opposition represented by Maia Sandu and also by Andrei Nastase”. This support to the new pro-EU opposition is interpreted as based on “absolute obedience” of the “right-wing opposition which behaves like slaves in its relations with Brussels” (Interview 69). On the contrary, the PDM is not willing to do such sacrifices and the “EU must learn how to cooperate with partners, not with slaves” (Interview 69).

In conclusion, the normative pressure and conditionality exerted by the Venice Commission, and the EU institutions did not change the cost-benefit calculations of the PDM. However, international organisation exerted successful differential empowerment which influenced the trends of political competition. While the PDM entered in open opposition with EU norm promotion, a clear pro-EU front of political forces became even more consolidated in its opposition to the process of electoral reform. The ACUM platform adopted this role of pro-EU reform-oriented opposition. At the early stages of the electoral reform, the Konrad Adenauer Stiftung and Friedrich-Ebert Stiftung together with the local civil society organisation<sup>25</sup> organised an international conference entitled “Replacement of the electoral system: Pros and cons” (IPN Moldova, 2017n). Key representatives of the pro-EU platforms PAS (Maia Sandu), PPDA (Andrei Nastase), PLDM (Tudor Deliu) took part together with the deputy chairman of the PDM (Adrian Candu) (IPN Moldova, 2017s). The member of the European People’s Party, Siegfried Muresan expressed the concerns of the EU institutions “that the ruling party aims to gain particular advantages” (IPN Moldova, 2017n).

As a consequence of the corruption scandals and this differential empowerment by both pro-EU and pro-Russia domestic actors led to the outcome of 2019 electoral outcome. The PDM oligarchic elite had lost citizens support and a new government established by the pro-EU and pro-Russia political parties, ACUM and PSRM, prioritised the end of the PDM control of the institutions. This circumstance is assumed to be interest-based and possibly supported by the resonance and salience of norms as the Rule of Law. This coalition was supported by both the EU and Russia.

As a consequence of the measures adopted by the PSRM-ACUM government, the EU provided 14.54 million Euros of Budget Support as soon as July 2019 (European Commission,

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<sup>25</sup> As the Association for Participatory Democracy ADEPT and the Institute for Development and Social Initiative Viitorul.

2019f). Furthermore, in October 2019 the EU concluded that political pre-conditions for the disbursement of 30 million Euros of macro-financial assistance to Moldova have been achieved (European Commission, 2019b) and an additional amount of 14.35 million Euros of Budget support programmes was approved. In terms of EU support, it is reported that the budget support allows the politicisation of the EU support, as a political gesture in order to provide motivation for reforms in Rule of Law (Interview 83). In addition, the strict conditionality applied in 2017 and 2018, has been identified as key for the reform process (Interview 74), while the resuming of the funding in 2019 is seen as positive conditionality and reinforcement of a reform-oriented government. However, given the events that led to the dissolution of the ACUM-PSRM government, it is clear that this conditionality did not successfully influence the PSRM elite. Therefore, it is possible to conclude that in Moldova positive conditionality is successfully used in strengthening reform-oriented elite, rather than changing the cost-benefit preferences of the elite that does not align with norm-compliance.

Against this background, the influence of Russia in Moldova can be traced back to the consolidation of the PSRM as a clear pro-Russian force and the 2016 election of the President Igor Dodon, who explicitly supported Moldova's membership in the Eurasian Economic Union (EEU) (Radio Free Europe, 2017b). Russia's leverage increased, as before the 2016 elections Dodon promised to approach the EEU for closer relations and Moldova was granted an observer's status to the EEU. His election was followed by a more permissive stance towards Moldovans working in Russia and the possible acceptance of "Moldova's participation in two free trade areas – but only when Dodon came to power" (Makarychev 2018: 13). Russia offered additional positive incentives shortly before the 2019 parliamentary elections. For instance, it announced an amnesty of irregularly working Moldovans in Russia. The conditions for benefiting of the emigration amnesty included the requirement of spending February 2019 in Moldova. Interestingly, this condition would allow them to vote at the parliamentary elections the 24 February 2019 (Radio Free Europe, 2018). In addition, in January 2019 a temporary agreement cancelled the "customs duties of certain products" imposed by Russia after the EU Association Agreement in 2014 (Gumene, 2019). This use of positive conditionality before and after elections is how Russia exercised differential empowerment of the PSRM and Dodon.

Secondly, Russia's linkages in Moldova, as in Armenia and Georgia, often relates to the use of conservative and nationalistic discourse. In the case of Moldova, the Russian influence on such discourse is much more obvious, as the Moldovan Orthodox Church remains closely linked and canonically subordinated to the Russian Orthodox Church, in addition to the

close linguistic and cultural links established with significant part of Moldova's population. This contrasts to the Orthodox Church in Armenia that developed very early canonical self-governance, and to Georgia where the secessionist conflicts have decreased the acceptability of close links with Russian political authorities (Laine and Saarelainen, 2017). Consequently, this kind of influence of Russia in Moldova has deeper roots. It replicates the "cultural" and "neoconservative" discursive shift that took place in Russia since 2012 (Engström, 2014; Melville, 2017; Robinson, 2017), as a response to the multiple threats and civilisational competition of the current state of globalisation that was perceived as "a source of 'objective pressures' on Russian national identity" (Gould-Davies 2016: 19). A securitisation of the "traditional Russian spiritual and moral values" (President of the Russian Federation 2015: 29) developed as a response to the current "demographic and value crisis" (Putin, 2012).

The 2013 Security Strategy clearly prioritises the threats on Russia's "traditional spiritual-moral values", as "the foreign cultural and information expansion" (President of the Russian Federation, 2015). These traditional values are "spiritual priority over the material, protection of human life, human rights and freedoms, family, creative work and service to the Fatherland, moral and ethical norms, humanism, mercy, justice, mutual help, collectivism, historical unity of the Russian nation, continuity of the history of our homeland" (President of the Russian Federation, 2015). Furthermore, the rights of the minority "must not [...] put into question" the rights of the majority, as the "natural and right" defence of values as Christianity and morality (Putin, 2013). Furthermore, the Russian Orthodox Church prioritizes collective traditional values above individual rights (Harzl 2017: 381-282) and personal dignity is a responsibility of "an individual [that] is foremost a member of a community which he/she owes love, respect, devotion, and, if necessary (gives) his/her life" (Curanovic 2017: 105). The Russian Orthodox Church (ROC) has a leading role in the protection of 'traditional spiritual-moral values', the development of national identity, as well as important mobilizational capacity (Lutsevych, 2013; Laruelle, 2015). In addition, ROC's influence is essential in Moldova, where the Orthodox Church is the most trusted institution with 65% of survey respondents having favourable opinion about it (Center for Insights in Survey Research 2017b). It is active at the local level and it dominates the public discourse on various issues.

The Church is reported to promote "intolerant rhetoric" towards Western education and homosexuality. In 2012 the Moldovan Church backed social protests against anti-discrimination Law on Ensuring Equality that was a condition for the Visa Liberalisation between Moldova and the EU (Lutsevych, 2013; Mitrofanova, 2019). The law adopted in 2012 prohibits discrimination based on sexual orientation, "since it forbids offending individuals on

the basis of their homosexuality and obliges all non-religious employers [...] not to discriminate against homosexuals” (Mitrofanova, 2019: 98). These provisions were very negatively assessed and opposed by the Moldovan Church, which “promised to excommunicate politicians who had voted for the law” (Mitrofanova, 2019: 98). In 2014 it issued a “Condemnation of gay parades and of the consequences of adopting the Law on Ensuring Equal Opportunities, which explicitly accused the government of collaborating with those who promoted sinful behaviour, thus ‘targeting the foundation of the most holy values of our people” (Mitrofanova, 2019: 98). These statements of the Church in Moldova influence both domestic electoral processes and foreign policy decisions of the country.

In Moldova’s policy-making the Church’ discourse connects well with that of the Russia’s policy-makers. During the 2016 presidential elections the Moldovan Orthodox Church and the ROC aligned in the conduct of “aggressive campaign against pro-EU candidates” (Dimitrova et al. 2017: 22). For the second round of the 2016 Presidential elections, a Bishop from the Moldovan Church openly supported Igor Dodon, while dismissing his opponent Maia Sandu, because she was “trying to do the Devil’s work” (Radio Free Europe, 2016b; Necsutu, 2019b). In addition, he questioned her morality, as she was not married and was not a mother. Leaflets, whose origin was not revealed, claimed that Sandu’s platforms supports homosexuality and mass-immigration (Radio Free Europe, 2016a).

Connectedly to the promotion of traditional values, at the end of 2018 the President Dodon hosted the World Family Congress in Chisinau, which gathered conservative anti-gay and anti-abortion groups. Notably, among the attendees were Russian groups, as the Sanctity of Motherhood, which are linked to conservative Russian oligarchs, as Konstantin Malofeyev and Vladimir Yakunin. Other Western-based conservative groups also attended (Necsutu, 2018a). The President Dodon, addressed the audience of the World Congress of Families in Russian, pointing that “more than one million of Moldovan citizens use this language”. Furthermore, he claimed that Moldovans “will preserve and defend our essence, identity and values”, because “we have people, we have traditions, we have faith and we have history. We are strong thanks to it [...] Why destroy all this?” (Mitrofanova, 2019: 101). Such statements link political parties, as the PSRM, with the continuity and existence of the Moldovan culture.

This dynamic has increased to certain degree the polarisation between traditional pro-Russian and liberal pro-EU candidates shortly before the elections. For instance, the Congress of Families took place in September 2018, five months before the February 2019 parliamentary elections. The Russian Patriarch Kiril was expected to be among the guests, but he was replaced by his representative Dimitry Smirnoff. However, the Patriarch Kiril rewarded Igor Dodon with

a Russian religious order “for the active support shown for the public initiatives of the Orthodox Church in Moldova” (Necsutu, 2018b). In addition, Dodon declared 2019 the “Year of the Family” and an annual “Festival of the Family” takes place the 15 May (Mitrofanova, 2019).

The Russian compatriots’ policy framed as Russian world is the second effective linkage instrument used in Moldova. Compatriots are those “who live abroad and are linked to the peoples historically residing on Russian Federation territory” (Russian Federation 1999, Art. 1). It has also been broadly defined as “people who are culturally or spiritually oriented towards Russia” (Laurelle 2015: 7; 15) and in 2001 Putin described it as “a matter of personal choice [...] of spiritual self-identification” (Putin, 2001). In addition, the Russian World corresponds to what Medvedev defined in 2008 as a sphere of strategic interests, giving the right of military intervention in order to defend Russian nationals, as in Ukraine in 2014.

Rosstrudnichestvo<sup>26</sup> is part of the Foreign Affairs Ministry and develops support, repatriation and nationalisation programmes for Russian ‘compatriots’ (Laurelle 2015). Therefore, a majority of citizens from the secessionist republics in the neighbourhood (as South Ossetia, Abkhazia, Transnistria and Crimea) had the possibility to become Russian citizens. These policies increased Russia’s leverage, giving it the possibility to claim the right to defend its nationals. In addition, Russian cultural and language centres linked to the embassies, organisation of exchange programmes, provision of grants for students and researchers in Russia, as well as the maintenance of Russian-speaking schools and historical commemorations (Laurelle 2015). These policies are very relevant in Moldova, due to the high concentration of Russian-speaking communities in regions as Transnistria, Gagauzia, Taraclia.

Lastly, financial assistance is provided to Russia-friendly associations that develop their activities in fields as support to civil society, of Russian minorities, youth and regional movements, and election observation (Laurelle 2015). Some such organisations are Russkyi Mir, the Gorchakov Foundation for Public Diplomacy, the Institute for CIS Countries, the Foundation for Supporting and Protecting the Rights of Compatriots Living Abroad, the World Russian Press Foundation and the International Council (Lutsevych, 2016). These organisations are founded by Russian state institutions, universities, “the state media, the security agencies and large state-owned companies” or members of these institutions are included in their boards (Lutsevych 2016: 12). Konstantin Kosachev, the chair of the Duma’s Foreign Affairs Committee was member of four organisations (Vojtiskova; *et al.*, 2016). These

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<sup>26</sup> Rosstrudnichestvo stands for Federal Agency for the Commonwealth of Independent States, Compatriots Living Abroad and International Humanitarian Cooperation

organisations focus on the promotion of the Russian World, Eurasian Integration and protection of the rights of Russian and Russian-speaking population. In Moldova such an organisation that counts Russian support is Izborski Club. It provides political analysis of the domestic and foreign policy of the country and is linked to the conservative elite in Russia. Some of its members are PSRM deputies and it cooperates with representatives from Russian institution. According to its website, its experts discuss the values opposition as a dilemma between “ultraliberal pro-European and pro-Russian politicians in Moldova” (Lunkin, 2019).

In addition, Russian-speaking media is a very important factor for the linkages between Moldovan and Russian society. Russia’s state TV channels and Sputnik media have significant presence in Russia’s neighbourhood. Research on this topic has confirmed that Russia’s media coverage of current events reflects “the ‘West’ as morally corrupt and weak” (Dimitrova *et al.*, 2017). Importantly, Russian-speaking media has significant presence and influence in Moldova. In 2016 Russian media was the second most popular source of information (with 68% of all respondents), after the Moldovan media (97%) and followed by Romanian media (with 46%) and lastly by media from EU countries (26%) (Marin, 2018).

In conclusion, the evolution of Russia’s foreign policy illustrates the presence of both realist geopolitical considerations as well as identity-based interpretations. The neo-conservative approach underlines since 2012 that the imitation of Western democratic experience alone can lead the Russian and traditional identities to a destructive crisis. This conservative perspective contrasts with the emphasis on individual and minority rights promoted by the EU, creating essential tension between the two. The effective development of linkages between Russia and Moldova counts on well-established institutions as the Orthodox Church and the common identity of the Russian-speaking community. Importantly, the cultural and religious entities developed do not remain isolated from policy-making, but rather exert direct influence on political competition through differential empowerment of specific candidates. Furthermore, leverage in the activation of beneficial trade and migration measures for Moldovan citizens and products are also used as a targeted instrument for empowering and rewarding those politicians that maintain close relations with Russian institutions.

## ***VI. FREEDOM AND EQUALITY***

The reform process in the field of electoral competition in Moldova also confirms the essential role of the dimensions of Rule of law and political competition. Key weaknesses in the field of Rule of Law, as the use of both representative and independent institutions for political and party goals, led to the abolishment of the amendment of the Electoral Code

adopted in 2017. The international and domestic arguments in support of a more transparent and accountable elections were used as an excuse for the adoption of a majoritarian system with high thresholds. This system was seen as a way to exert local control on citizens' votes. In addition, the difficulties of its application in an ethnically and culturally diverse country as Moldova has been pointed by domestic and international actors. This use of the political institutions for the promotion of narrow party interests and goals leads to reduced equality between different social actors, as institutional leaders control and direct the processes without taking into account the interests and needs of other social sectors. This consideration regarding the lack of equality and representativeness affects also independent institutions as the Constitutional Court that also had to abolish its 2019 politicised decision after the change of government took place. These dynamics affect negatively the representativeness, the services provided by the state institutions, as well as the citizens' trust in them.

In addition, the legal outcome and implementation of the reform shows that most of the international concerns regarding the effectiveness of the electoral accountability were not addressed. For instance, the lack of regulation of many campaign activities and violations led to ineffective accountability of the elections given that key complaints were not addressed. As in the previous cases, this leads to toothless forms of accountability, which do not guarantee equal rights for all party candidates and voters. A key violation in all the countries was the misuse of administrative resources, and in the case of Moldova the direct use of state institutions in benefit of specific political parties. However, the lack of definition of this violation in the legislation, as well as the weaknesses in the campaign regulation allow political parties to use institutions and private resources in their benefit. This conditions of blurring boundaries between public and party interests affects negatively citizens' equality and diminishes social trust and legitimacy of the processes of electoral accountability,

These dynamics of instrumental use of public institution for the goals of political struggles among domestic actors became obvious in the evolution of the domestic competition and participation throughout the process of electoral reform. There was a clear contradiction between the declared goals of the electoral reform and outcome of this process. In addition, the affiliation networks showed complex mechanisms of coordination between political parties which theoretically are in opposition. Furthermore, the fact that the electoral reform drafted and supported by the PSRM was abolished in 2019, after the change of government, with the support of the PSRM, illustrates the informality and lack of transparency of policy-making. Such contradictions in the positions of domestic actors, shadow agreements and *façade* political

reforms show the weaknesses of political parties in Moldova. In contrast to Armenia and Georgia, in Moldova the party system is highly fragmented and unstable. The positions of political parties frequently fluctuate according to the conjunctural benefits of the different situations and inter-party agreements. These weaknesses of the party system reflect unstable political parties with weaker links to their voters, which influences negatively the possibility for citizens to hold them accountable for their positions. Therefore, the lack of responsible, transparent and accountable political parties reduces the possibilities for citizens to exercise their political rights and effectively make use of electoral accountability. In contrast to Armenia and Georgia, this system is less polarised and allows greater space for negotiation and consensus-building among different actors.

In addition, the fact that a corrupt party as the PDM achieved almost complete control of representative and independent institutions in Moldova shows clear contradiction with an essential condition for democratic equality. Specifically, the requirement that democratic institutions should not be “subject to or conditioned by non-elected parties or exponents of other external regimes” (Schmitter & Karl 1992: 45 quoted in Morlino, 2011: 30). The fact that the PDM achieved a majoritarian support for its government and for different reform initiatives as a result of different MP that left their political parties, shows the low level of representativeness of these parties. In addition, the control of the electoral process through non-transparent nomination of independent and oversight institutions as the CEC or the Constitutional Court show that this key weakness of political competition in Moldova, affects negatively the equality between citizens. The fact that the PSRM-ACUM government initiated a change in all the key position in such institutions shows the relevance of this aspect.

## ***VII. CONCLUSIONS***

The above analysis of the electoral accountability reform shows that the weaknesses in Rule of Law and in domestic competition have affected negatively an effective electoral accountability. The blurring boundaries between state institutions and party interest make impossible the exercise of accountability and citizens’ rights in equal conditions. The use of administrative resources and the control of independent and representative institutions by non-elected political elite further vulnerates citizens’ rights and weakens democratic qualities. The control of key institutional and material resources by the PDM elite led to a situation of extreme inequality, given that the opposition cannot compete with the unlimited oligarchic resources.

In terms of domestic competition, Moldova is the most plural system in which, however, political parties remain weak intermediary organisations that accept frequently changing loyalties of their members. Therefore, Moldova's party system is not as polarised and dominant as in the cases of Armenia and Georgia, which allows it to have greater possibility of negotiation and consensus-building. However, political parties are influenced by informal and frequently patrimonial goals and non-transparent procedures, which makes them less representative and legitimate institutions. In addition, the party system in Moldova has undergone complete renewals on several occasions in the last decades, showing the instability of the system. As reported in previous chapters political institutions in Moldova are much weaker and their operation depends on the internal dynamics of the incumbent political parties. Therefore, in the period of the PDM government they were dominated by non-transparent and patrimonial negotiations with members of different parties in the Parliament, as well as political control of independent institutions as the Constitutional Court.

Against this background international actors, as the EU and Russia, become involved in the political struggle for democratic institutions. The EU imposed to Moldova strict political conditionality when basic democratic principles were violated, which affected negatively the PDM government. In this way the empowerment of domestic reform-oriented actors has proven to effectively have the capacities to empower new pro-EU reform-oriented actors. This level of conditionality and differential empowerment that the EU developed in Moldova, was not observed in the cases of Armenia and Georgia. The same applies to the swift renewal of the financial support for Moldova after the ACUM-PSRM government was established. The short duration of this government and the abolishment of the electoral reform showed that EU incentives were successful in strengthening the reform-oriented ACUM, but were not able to alter the preferential fit of democratic measures of patrimonial PDM or pro-Russia's PSRM. Therefore, positive incentives proved to be effective in Moldova in strengthening those parties that already demonstrated resonance and salience with the reforms, rather than to change the preferential fit of those parties that did not show any of these features before the conditionality.

On the other hand, Russia also provided positive incentives in support of Dodon and the PSRM based on its leverage in the field of migration and trade. Russia also showed significant flexibility by allowing Moldova to have an observer status at the EEU. The overlap of these incentives provided to Dodon with the electoral calendar shows that in the case of Russia the influence is much more focused on the electoral outcome than on the democratic procedures or norms. Therefore, Russia empowers the domestic actors that are convenient to

<b>Independent variable</b>	<b>Contextual propositions 2010 - 2017</b>	<b>Causal proposition 2017</b>	<b>Outcome 2017-2020</b>
Secessionist conflicts in Gagauzia and Transnistria	Frequent changes in the electoral system. Proportional system with deadlock.	Mixed electoral system with high threshold, no improvements in campaign or oversight.  The government controls key nomination	<b>Constitutional Court nominations</b> influence the electoral process.  <b>Electoral reform abolished by PAS-ACUM-PSRM government which also reviews key institutional nominations</b>
Fragmented national identity	<b>Political competition</b> Complex, fragmented party system, that allows party defection  Episodic PDM-PSRM cooperation, as they have common origins.  AEI members loose legitimacy due to corruption	Two drafts introduced and the <b>PSRM draft for mixed system received support</b> by PDM and PSRM deputies. Hasty reform process- adopted for six month on second reading PAS-ACUM emerge as pro-EU reform-oriented party, a	PDM elite isolated  <b>PAS-ACUM-PSRM coalition overcomes geopolitical barriers</b> for 6 months
	<b>Limited social participation in the process</b>  The Church supports PSM and Dodon	The concerns of the civil society organisations were not tackled	Civil Society organisations and protests put pressure against PDM control
Eastern Partnership policy	<b>Negative conditionality</b> applied to PDM government  The Church promotes conservative discourses against the EU	<b>Differential empowerment of PAS-ACUM</b> and negative conditionality is applied to PDM Critical opinion of the Venice Commission <b>Strict political conditionality of the EU, but unsuccessful with the PDM.</b>	<b>Successful conditionality with PAS-ACUM elite, but the coalition last only 6 months</b>
Russia has military and economic leverage	Closer relations established by Igor Dodon and PSRM	<b>Russia empowers PSRM</b> through normative support and increased incentives	<b>The Church and other conservative actor reinforced PSRM elite before and after elections.</b>

Table 11. Reform process of electoral accountability in Moldova.

its interests in Moldova. On the other hand, the linkages between Russia and Moldova also focus mainly on the identity-based and neo-conservative narratives regarding the need to protect the traditional values of Moldovan society. The main channels for this linkages are the Orthodox Church, civil society and analytical organisations as well as media in Russian. In the case of linkage it has been observed that events and commemorations concentrate around election dates, which indicates the focus on influencing the electoral outcome rather than the procedure or the legal development of the norms. In addition, as the EU does, Russia successfully empowers specific actors in Moldova in order to promote them as viable alternatives for domestic decision-making.

In conclusion, both the EU and Russia have developed more focused and flexible conditions for influencing domestic decision-making and outcomes in Moldova. The analysis of the reform processes in electoral accountability offers relevant insights on the strategy that the EU and Russia adopt in a more fragmented and plural contexts. Specifically the strategy of differential empowerment was used by both international actors, which eventually led to the complex coalition between the ACUM and PSRM. At the mid- and long-term, however, international actors did not alter the cost-benefit calculations of those domestic actors among which the democratic norms did not show any resonance or salience. The EU successfully reinforced those actors that were already socialised in the democratic norms and were willing to implement them. This pro-reform and anti-oligarchic disposition on the side of the ACUM is actually their main strength in the domestic competition. Therefore, at this stage of domestic development, the implementation of democratic reforms also overlaps with the preferential fit of reform-oriented parties as ACUM and the platform PPPDA.

# *CONCLUSIONS*

This research studied what external actors successfully influence political reform process. For this purpose, it traced how the EU and Russia interact with domestic reform processes based on the comparative analysis of the Rule of Law, inter-constitutional and electoral accountability in Armenia, Georgia and Moldova. In line with the constructivist arguments of Thomas Risse and Joel Migdal, domestic political reforms become a space of cooperation and/or struggle for domestic and international actors that argue in support of their goals. Therefore, this research brings new insight on the intertwining influence of domestic and international actors that takes place in reform process and the way that these interactions influence and define their outcome in terms of democratic weakening or deepening.

This study contributes to the literature by adopting a domestic-centred approach that analyses in depth the constellation of actors involved in the reform processes. Firstly, it contributes to the EU norm diffusion literature by explaining how domestic processes interact with international actors and dynamics. In this way, it clarifies the role of domestic actors and contributes for better understanding their actorship, rather than focusing on their role in terms of passive norm adoption and application. Secondly, it develops this analysis in the field of democratic qualities, which touches upon system-wide domestic structures, rather than sector-specific reforms. Thirdly, it contributes to the literature on authoritarian diffusion as it contextualises these processes against the background of increased regional competition between two international actors – the EU and Russia. It clarifies the recent evolution of what is described in the literature as democracy promotion and obstruction and the way this external influence affects smaller post-Soviet states. Importantly, the focus on the strategies and role of domestic actors contributes for explaining the process and outcome of democratisation in the region and sheds light on the influence of regional forces on domestic transformation.

This research has shown that political competition and participation in reform processes are the key dimensions that condition the outcome of political reforms and the institutional performance in the three countries. Social Network Analysis showed how domestic actors adopt targeted strategies for opening or limiting the access to decision-making processes according to their preferences. Therefore, the SNA provided a key methodological contribution to the process tracing used in constructivist research. Specifically, affiliation networks illustrate how domestic actors struggle and/or collaborate in reform processes.

The SNA has also confirmed the change of strategies in the reform processes, when responsibility was shifted from political to judicial actors (Georgia Rule of Law). In addition, informal dynamics of negotiation among domestic actors were also made obvious by the SNA, bringing in this way key analytical insight. In addition, it also confirmed the central role of political competition and participation, due to their capacity to transform the actual functioning of inter-constitutional accountability and of the reform processes. Institutional performance was defined by the trends of domestic political competition, showing that social constructivist argumentation has greater explanatory power than institutionalist reasoning in the three case-studies. The subordination and instrumental use of the institutional features and norms to the interests of domestic actors prove that democratic reform processes can be conceived as a background against which political struggle for power takes place. Reform processes are perceived by domestic actors as an opportunity for reinforcing or retaining their power positions. For this purpose, domestic actors use both normative and rationalist arguments.

Furthermore, this research has shown that the key issue at stake and motivation in this struggle relates to cost-benefit calculations regarding the power positions of domestic actors. Therefore, normative support of international actors is effective when applied to those actors that will see their position strengthened by the application of values as Rule of Law and accountability. This is the case of the reform-oriented elite, which struggles against the long dominance of well-established and powerful incumbent. The instrumental use of normative arguments in political struggles is another proof of the constructivist perspective. In this sense, normative arguments as the need to limit any external interference in the Judiciary have been used against transparency and civil society participation in the reform process. This dynamic is an indication of the instrumental use of democratic norms for power struggles.

### ***RESSOURCES USED BY DOMESTIC ACTORS***

The combined use of process tracing and SNA has allowed to clearly identify the strategies used and resources mobilised by domestic actors in order to influence the reform processes and their outcome. The main strategies and resources used by domestic actors are described with specific examples below. The following resources have been used by domestic actors in order to influence the reform processes and/or the institutional performance:

- Formal legislative initiative is a prerogative only of some actors in the context of democratic reforms. Domestic actors as civil society organisations and opposition might advocate for legislative or Constitutional reform, but deep reforms can usually be

initiated by a small number of actors, as the parliamentary majority. Some actors use other flexible strategies in order to initiate such reforms, as was the case of the President in Moldova who in 2000 called referendum as a step towards Constitutional change.

- Control of the reform process refers to the capacity of certain authorities to develop and implement the reforms exclusively, without necessarily giving access to other actors. The 2015 Constitutional reform in Armenia is an example when the incumbent established a small Constitutional Commission and approved the reform without requiring the support of any external actors. The reform processes in the Prosecution have similar features, as the executive controls the access of other actors to this field.
- Veto power on the reform process or obstruction of the normal institutional performance refers to the possibilities that domestic actors have to veto the reform or specific aspects of its implementation. This would be the case of an opposition party which has enough votes for vetoing the adoption of specific laws. For instance, the Prosecution office reform in Moldova was not supported in the Parliament by all the members of the governing coalition, which technically allowed them to successfully veto its adoption. The implementation of the reform can also be obstructed as a way to demonstrate the lack of political consensus. For instance, in Georgia the opposition vetoed the selection of those members of the Superior Council of Justice that had to be approved with a smaller parliamentary majority, forcing it to operate in a smaller configuration.
- Access to the content and the discussions of the reform process is usually granted to representatives of the opposition forces and civil society organisations. The access to the decision-making processes, even without capacity to influence the outcomes allows domestic actors to mobilise social and political support (domestic and/or international) and to influence the reforms. This resource is part of the accountability of public institutions and is key for those actors that influence domestic and international opinion. For instance, the Judicial reform in Georgia gives this access to domestic organisations and parties that made public its weaknesses and initiated broad advocacy campaigns.
- Party support is key for the adoption of the reforms in fragmented political contexts. For instance, in Moldova the government was supported and managed to approve the electoral reform, as well as the 2000 Constitutional reform based on the frequently changing loyalties of party members. In Moldova this feature evolved towards informal negotiations and neopatrimonial loyalties used as a guarantee for parliamentary approval. In Georgia, the relative fragmentation of the governing party and its reduced

support affected the 2010 Constitutional amendment and the Judicial reform. The election of key judicial positions brought to the light the GD internal conflicts.

- The creation of parallel consultation and drafting processes was adopted in Moldova and Georgia with the purpose of showing disagreement and de-legitimising the reform process adopted by the incumbent. While in the 2000 Constitutional reform in Moldova, these efforts were successful, in Georgia's 2010 Constitutional reform parallel Constitutional Commissions were not successful. However, they contributed to de-legitimising the efforts of the incumbent to persuade of their intentions to reach genuine consensus with the opposition forces.
- Network resources in other executive or independent bodies has proven to be a key resource in the political struggle among the main domestic actors. The capacity of the (former) incumbent to build a network of loyal figures that take key institutional positions among the three branches of power and especially in Rule of Law '*independent*' institutions, led to the most significant and protracted political conflicts in the three countries. The strategy of developing a network that controls key institutions allows the incumbent to govern in conditions of reduced accountability, while limiting the access to these decision-making or accountability institutions to actors as the opposition or civil society. This lack equality among domestic actors leads to highly conflictual dynamics, in which the power shifts are accompanied by the partial or full replacement of members of Supreme Court, High Council of Justice, Constitutional Court, Prosecutor General. Such institutional conflicts and power struggles among incumbent and opposition were traced in the three countries. In Moldova and Georgia this struggle led to informal negotiations and shadow agreements among political and judicial/independent representatives. Such networks of political control are a sign of subordination and instrumental use of key democratic institutions to political and even personalist goals, which is an indication of *façade* democracy.
- Social mobilisation proved to be a key resource for steering social disagreement and exerting pressure on political figures for democratic deepening. Unconventional participation is used by political and social actors when other institutional procedures repeatedly show ineffective performance, leading to a lack of equal and free conditions for citizens to exercise their rights. In Armenia the exclusion of broad sectors of society from policy-making led to complete replacement of the political elite in 2018. In Georgia, a consensus regarding the 2021 electoral system was reached only after several waves of protests (and international pressure) forced the incumbent and opposition to

negotiate and reach a mutually acceptable solution. In Moldova, the leaders of ACUM built a clear opposition front around domestic social mobilisation.

In the three countries, the political elite was replaced by broad coalitions of opposition politicians, civil society activists and journalists after more or less long period of democratic weakening. Importantly, in Georgia high domestic polarisation led to significant disengagement with the political elite including the opposition, and protest leaders rejected any involvement of political parties.

Social mobilisation has increased also among traditional, conservative and nativist social and political groups in the three countries. This trend in addition to the increased unconventional participation as a last-resource measure to influence decision-making, has increased the polarisation in the three countries. In addition, these conservative groups clash on cultural and identity basis with frequently pro-European factions of society, which increases the sense of opposition and cultural dilemma in these societies.

- Economic resources are mobilised in the three countries based mainly on the links between oligarchic leaders and political parties in the three cases. The exact extent to which these relations influence policy-making and the reform process is difficult to trace, which represents one of the main limitation of this research. However, this study has identified a small number of clear examples when economic resources were used for influencing institutional processes. For instance, before the run-off of 2018 elections in Georgia, a financial entity linked to Ivanishvili provided funds for the debt relief applied by the state to 600.000 citizens. In addition, the informal loyalties between policy-makers politicians and leading businessmen has been traced by domestic civil society organisations in the three countries. The SNA also illustrated the past affiliation of some Commission members with companies or foundations of key political figures.
- Access to influential political and social figures and institutions provides great moral support to the causes for which policy-makers advocate. For instance, in Georgia and Moldova the relationship and the consultation with the Head of the Orthodox Church is a key factor that is mobilised close to electoral periods or to key political decisions. Given the popularity of the Church, its statements and positions on political topics is an important reference point in policy-making.
- Access to international funding contributes for institutional strengthened of both social and institutional domestic actors. This funding increases the incentives for the reforms, but was also used for differential empowerment in the three countries. For instance, financial support provided to local civil society and expert organisations contributes for

building a critical and well-organised civil society, which is further legitimised by the external support provided.

- Normative argumentation based on international standards. Civil society and opposition actors commonly base their advocacy and policy-oriented actions on the normative arguments provided by international actors and expert institutions as the Venice Commission, the EU and EU members states. On repeated occasions domestic civil society organisations organise public discussions and meeting with the support of international organisations. In addition, the use of internationally recognised a standards and institutions in support of their arguments gives them additional legitimacy.
- The discursive support by international actors is a more direct way to intervene in the domestic processes and legitimate the actions or arguments of domestic actors. Domestic actors increasingly develop stable relations with different international actors in order to strengthen their advocacy efforts. This is the case of the relations built with political parties in the EU Parliament and in the Russian Duma, as well as with representatives of the EU Commission, the Council of Europe. Political parties, state institutions and even civil society organisations invest important amount of time and resources in sustaining and mobilising such international relations. Such discursive support by international actors was key in conflicts between the government and civil society organisations in Georgia, the RPA leaders and members of Yedinnaya Rossia, as well as the direct criticism and approval of representatives of the Council of Europe. This strategy is key as external legitimation of domestic reforms tends to replace domestic consensus-building processes. In parallel, on several occasions strong domestic mobilisation and protests motivated the intervention of international actors.

These resources are mobilised by domestic actors both in support and against democratic deepening according to their preferences. The combination of contextual factors, institutional framework and trends of domestic participation and competition define the selection of a different strategy based on the availability of the above resources in each country. The most characteristic strategies in each country are briefly discussed here in order to illustrate the interdependence between these aspects and their implications for democratic qualities.

### ***MOLDOVA'S POLITICAL TRANSFORMATIONS***

The 2000 Constitutional reform in Moldova clearly showed the domination of the parliament even in the context of a constitutional reform initiated by the President. This trend was made obvious in the affiliation network of this reform process and illustrated the resistance

of the parliamentary forces against power centralisation in the Presidency. In spite of being a semi-presidential system, the Parliament managed to control the process and weakened the President's role. Furthermore, the 2000 constitutional amendment was an expression of the personalist conflict between the President and parliamentary majority. Even if the President used his right of initiative, the Parliament achieved an effective control of the reform process, through the initiation of a parallel process, which became dominant due to its capacity to mobilise a network of different political actors and a broad party coalition. The reform was instrumentally used by the representatives of both institutions to improve their power positions by mobilising the resources mentioned above. Such instrumental use of the political reforms and mechanism of inter-constitutional accountability in benefit of specific political parties suggest their lack of effectiveness and equality.

The affiliation network based on the group of PLDM MP that in 2016 filed the complaint to the Constitutional Court showed clearly the changing political party structure and the shifting loyalties among competing parties. Similar strategy allowed the PDM to constitute a government in spite of having only 20% of all MP. For this purpose it counted with the organisational support of several parties as well as developed network through its link with individuals from different executive and independent institutions. The higher level of fragmentation and plurality of the competition in Moldova is reflected in the greater capacity of negotiation and consensus-building. However, these trends in Moldova lack transparency and render domestic competition and electoral accountability ineffective. The instrumental use of such competition dynamics reduces the representativity of the political system and citizens' capacity to equally access and influence the decision-making processes. The democratic weakening in this case is based on the institutional instrumentalization and the influence exerted by informal dynamics in pursuit of personalist or party interests. The PDM managed to control the reform process and to veto the progress of democratic reforms based on its network capacity to control Rule of Law institutions, as well as broad party support in the parliament behind its interests. The personalist and the elitist trends of competition in the case of Moldova are strengthened by the weakening of the Rule of Law and the consequent influence and control of state institutions. This subordination of the institutions to the interests of oligarchic party leaders renders the mechanisms of accountability toothless and ineffective.

As a consequence, the majority of Moldovans are in a condition of extreme inequality, due to their impossibility to access the mechanisms for institutional accountability. This dynamic is representative of *façade* democracies, in which citizens' freedom and equality in

the exercise of political rights are significantly reduced. The instrumental use of political institutions and the closed negotiations limit the transparency and the inclusiveness of the system. The political control of the Constitutional Court represents the worst example of the use of accountability institutions as a *façade* for pursuing party interests.

### ***ARMENIA'S POLITICAL TRANSFORMATIONS***

The SNA in Armenia illustrated the domestic trends of competition and the way that they condition the institutional reforms and performance. The affiliation networks in this case were much smaller, with focus on personalities that are members of more than one Commission. This dynamic is indicative of the power concentration in Armenia which remained dominant even after the adoption of Parliamentary system in 2017. It allows a relatively small political elite around the incumbent to control the reform process and limit the access to any other domestic actors. This power concentration is an important historical heritage linked to the need of stability, due to the Nagorno Karabakh conflict. It is a key challenge for the actual societal accountability of its institutions, which would usually be required in order to guarantee the effective functioning under the neo-Latin model of Rule of Law. This lack of societal accountability affects negatively citizens' freedom and equality. The politicisation of the Judiciary and Prosecution allows the control of these institutions by the incumbent party, which consequently limits the equal access to opposition social groups.

This substantial concentration of power and influence over key nominations in the Judiciary and Prosecution in the last two years has moved from the hands of the President to the Parliamentary majority. Given the trend of sur-plus majorities in the Parliament, the opposition still lacks capacity to influence the policy-making processes. This power disbalance was even more prominent during the period before 2018, when electoral fraud reinforced the institutional monopoly by the RPA (see chapter IX). In Armenia the incumbent used its capacity to initiate and control the reform process in addition to its party support and network resources in independent and executive institutions. Since the power transition in 2018, the political struggle takes place between the RPA (which still retains important network resources due its past influence on key nominations as the Constitutional and Supreme Court) and the party My Step (which retains is dominant in the legislative and executive institutions).

In addition, the institutional control of both representative and Rule of Law institutions by one political faction, allows their instrumental use for political goals. Such dynamics potentially reinforce the zero-sum relations between government and opposition, which is

illustrated by the politicised trials against RPA leaders for the violent suppression of 2008 post-electoral protests. This democratic weaknesses and entrenched political inequality reinforce the lack of trust in the institutions. Due to the lack of effective mechanisms for inter-constitutional and electoral accountability, unconventional participation has gained new legitimacy.

### ***GEORGIA'S POLITICAL TRANSFORMATIONS***

Lastly, Georgia proved to be a very interesting case, due to the balance of its political elites between normative resonance, salience and cost-benefit calculations. On the one hand, due to its identity-based EU aspiration, it showed greater commitment to adopt reforms. On the other hand, their protracted implementation and loopholes in the normative development translated in non-transparent nomination processes of individuals close to the governing party. The reform dynamics clearly reflect the cost-benefit analysis of the competing groups that struggle for increasing their respective power positions through the control of key institutional positions. The SNA of the Constitutional and Judicial reforms in Georgia proved that formally inclusive trends of participation did not prevent the incumbent from controlling the reform process and defining its outcomes according to its short- and mid-term interests.

Specifically, the two affiliation networks of Georgia's Judicial reform (Chapter V) illustrate that the incumbent opted for controlling the reform process through the limitation of the access and involvement of legislative, political, and civil society actors, while including representatives of its network of actors in the executive and judicial institutions. The increased role of Judicial actors in the reform would be very positive development if individual independence in the Judiciary allowed the existence of competing factions. However, given the deficiencies in this field in the last years, the domination of only faction in the Judiciary over key institutional reforms can be seen as democratic weakening at this stage. The use of this strategy reduced the institutional legitimacy and increased social frustration. Importantly, this dynamic together with the loss of trust in political parties, increased the pressure of social protest for reaching consensus on the electoral system to be used in the 2020 elections.

In addition, the reduced transparency, social and political involvement and informal trends of negotiation since 2015 affected negatively democratic equality. The lack of equal access to institutional processes reduce the representativeness and impartiality of judicial institutions. The instrumental use and power concentration in specific judicial structures influence negatively the professional independence and impartiality of the Magistracy and consequently citizens' equality. This inequality is reinforced by the concentration of power in

the executive and the governing coalition, which has an autonomous capacity to nominate key figures in the Judiciary and build a network of supportive institutions. This dynamic reinforces the conflictual policy-making, the isolation of the opposition and civil society, which may lead to complete replacement of the individuals on key Judicial after power transfer. For instance, several members of the Supreme Court were replaced by a highly politicised procedure, developed in spite of the opposition of the EU and the Venice Commission.

### ***CONCLUSIONS ON THE QUALITIES OF DEMOCRACY***

Regarding the different dimensions of the quality of democracy, this research has shown that effective Rule of Law, political competition and participation are the main democratic dimensions and pre-conditions for democratic deepening. Importantly, the three countries presented key weaknesses in the field of Rule of Law, which led to deficient electoral and inter-constitutional accountability. The ineffective Rule of law allowed the instrumental use of political and judicial institutions by the incumbent in the domestic power struggle. The guarantees that the governing party had regarding the use of the institutional system and the legal framework in its benefit, implied significant inequalities and vulnerability of the citizens that lacked access to institutions. Therefore, Rule of Law is a key dimension for citizens equality and freedom, and a pre-condition for Inter-constitutional and electoral accountability.

This instrumental use of institutional and legal procedures for reproducing the incumbent's power positions is a highly-valued asset in the preferential fit of the democratic reforms from the perspective of domestic political parties. Therefore, when the reforms threaten the control of this asset, the government adopts different strategies for weakening the democratic quality of the reform processes. In all three countries the initial reasons declared for the reform processes did not correspond to their legal development and implementation, eventually leading to the adoption of toothless and politically controlled accountability mechanisms. The lack of political will, in a combination with the desire to satisfy the EU conditionality allowed only the adoption of strategic and policy documents for the Rule of Law, which however did not lead to significant institutional development or norm-internalisation. In addition, domestic actors use strategies as the creation of parallel and alternative institutions, the lack of implementation or the adoption of legislation, which invalidates the concessions of the constitutional/legal reform. On occasions, the government has clearly initiated a reform, which has the goal to weaken an important Rule of Law institution.

The main asset in all the countries is the control of key institutional positions that are meant to provide support for achieving political goals. This dynamic finds a clear expression in the struggle for political control of the Constitutional Court, the no-confidence vote regulation (in the case of inter-constitutional accountability), the nomination and prerogatives of Prosecutor General, and members of key Judicial institutions as the High Council of Justice, Supreme Court (in the case of inter-constitutional accountability), and the balance between proportional, mixed or majoritarian electoral system.

The negative consequences of the lack of equal access to institutional decision-making and nominations is even more reinforced if there is additional power concentration as a result of the electoral accountability. Importantly, the elections in the three countries showed that they take place in conditions of extreme inequality. Vote-buying (Georgia), controlled vote (Armenia) or non-transparent negotiations (Moldova) have become dominant practices leading to meaningless electoral accountability. These and other negative practices imply the lack of compliance with one essential feature of the minimalist definition of democracy - the requirement that the democratic institutions “are not subject to or conditioned by non-elected parties or exponents of other external regimes” (Schmitter & Karl 1992: 45 quoted in Morlino, 2011: 30). In Georgia the electoral system had a distorting role that contributed for this trend over time, reinforcing the zero-sum relations between political parties. Eventually these dynamics led to reduced social trust in democratic institutions and inspired important citizens’ protests.

### ***TRENDS OF POLITICAL PARTICIPATION AND COMPETITION***

As a consequence of the dynamics described above, unconventional participation in Armenia and Georgia became a more legitimate and relevant strategy for influencing decision-making institutions. In Armenia, the 20 years of dominant RPA government led to its loss of legitimacy, which was further emphasized by the losses in the 2016 war with Azerbaijan. The 2018 Velvet Revolution in Armenia was also a consequence of the increasing social activism throughout the 2010s and the consolidation of broad and innovative social movements.

In Georgia, the presence of consolidated civil society platforms and their access to the reforms allows relevant and influential advocacy. International organisations have supported reform processes when domestic opposition and civil society have claimed the need of reinforcement of the democratic dynamics. Besides, the reduced trust in the institutional framework and the political parties as intermediary institutions also led to increased social protests. This unconventional participation was very effective in putting pressure on the reform processes, while adopting a very distanced position even from the opposition parties.

Importantly, social protests in Georgia increased in 2019 and 2020, which shows that one of the main weaknesses of the political system is the low level of development and capacity of consensus-building of the political parties. Their personalist features, as well as the polarisation of domestic competition continue to pose persistent challenges for deepening democratic quality. The 2019-2020 negotiations on the electoral system, however, shows that this dynamic can be reversed and consensus between political parties is possible. The adoption of proportional system is expected to have a positive impact on these dynamics.

In Moldova the social protests after the 1-billion theft in 2015 led to a transformation of the party system, as new political parties in the pro-EU geopolitical spectrum effectively developed. Besides, as a result of the application of strict negative conditionality by the EU, the PDM developed a more nationalist and populist discourse. This behaviour shows how valued is the power control by oligarchic circles that are unwilling to adopt pro-democratic reforms, because they can damage their power positions. The reduced resources for the state budget did not lead to behaviour or priority change in the PDM-dominated coalition.

These dynamics have been accompanied by the emergence of neo-conservative domestic actors which co-exist in the same civic spaces with liberal civil society organisations. These groups often defend traditional values as family and orthodox religious identities that need to be protected from the ultra-liberal Western influence which seeks to destroy the autochthonous societies. These neo-conservative nativist formations are involved in increasingly polarised conflict with LGBTQ groups. Interestingly, these value-based discourses are often well-aligned with similar groups linked to the Russian governing elite and key cultural institutions. The main channels for such linkages are the governing elite, the Orthodox Church, civil society and analytical organisations as well as media in Russian. In regard to the linkage model, it is observed that events and commemorations concentrate around election dates, which indicates the focus on influencing the electoral outcome, rather than the procedure or the legal development of the norms. In addition, like the EU, Russia successfully empowers specific actors in Moldova in order to promote them as viable alternatives for domestic decision-making, as the PSRM and the President Igor Dodon.

### ***INTERNATIONAL INFLUENCE***

In Armenia domestic conservative groups and media acting in opposition to My Step elite, align with RPA and pro-Russian discourses. The active involvement of such conservative groups in policy-making is a relatively new phenomenon in Armenia. They take advantage of liberal spaces and mimic civil society *modus operandi* in support of conservative goals. In

addition, clear linkages between Yedinnaya Rossiia and the RPA leaders has been established. Russia's resistance based on this relationship was among the challenges that My Step faced.

Complex networks and relations between Georgian and Russian conservative factions have developed in the last years. The most obvious effect of these relations is the polarisation of the society between the liberal pro-EU and the conservative pro-Russian factions. It is important that the values have become a field of struggle for preserving Georgian culture from the negative influence of the EU or Russia. The 2019 protests, however, have shown the low level of tolerance of Georgian society towards specific figures from Russia's elite.

On the basis of these linkages, the EU and Russia effectively used differential empowerment and influenced electoral processes and outcomes as well as domestic competition. The EU did so through the reinforcement of reform-oriented elite, while sanctioning negative developments in electoral accountability, as in Moldova and in Georgia. Street protests in Georgia led to more important involvement of the EU. Importantly, this external influence was met with reciprocal reaction in the political elite. Specifically, domestic actors (in Armenia and Moldova) adapted their discourses to the sensibilities of the EU and Russia in order to seek international support, increase their possibilities for development and for strengthening their power positions through the advantages offered by the two external actors. In this scenario the competing frameworks of the EU and Russia have reduced the need of exclusive choice between the two regional actors. If the EU is seen as a preferential actor in the democratic development, other regional interdependencies as security, energy and migration are more effectively addressed by Russia. In this way, domestic actors seek an optimal outcome for their national development and domestic power positions through the selection of the most convenient incentives offered by each international actors. Therefore, the domestic context and needs of each country and its constellation of political and social forces become a key factor to be considered when regional and international relations are studied.

The lack of overlap between the preferential fit of dominant domestic groups with EU promoted reforms, due to their potential loss of power, made impossible the advancement of such reforms in spite of the economic incentives and socialisation efforts offered by the EU. From this perspective the size and credibility of external incentives feed into the preferential fit calculations of the political elite, which aims to retain its power positions and control of institutions, while expanding its legitimacy and access to material resources provided by the EU and/or Russia. The balance of this preferential fit calculations shows that when 'fake compliance' takes place, external incentives are instrumentally used by domestic elite for its

political goals, contributing to the formal advancement of reforms (mainly at the strategic level). However, these reforms are challenged or stalled if they threaten their power positions.

Like Armenia and Georgia, in Moldova the control of key institutional positions and the nomination of supportive Judges or officials is perceived as an essential asset for domestic political actors. In addition, the behaviour of the PDM when faced with strict EU conditionality, shows how valued is the power control by oligarchic circles unwilling to adopt reforms that can damage their power grip. The reduced resources for the state budget did not prove to lead to a behavioural or priority change in the PDM-dominated coalition in 2017 and 2018.

Given these dynamics the criticism against the EU approach at the beginning of the 2010s brought attention to several key points. Firstly, the EU support concentrated on the creation of a comprehensive and inclusive reform strategies. However, the norm development and implementation did not follow the same inclusive trends and is defined by legal loopholes that weaken institutional impartiality and accountability. In spite of this “fake compliance” key incentives, as the AA/DCFTA or VLAP signature, were provided as a reward for the successful initial steps of the reforms. After this point the credibility of potential negative conditionality was reduced, which affected negatively the progress of the reform. Similar dynamic was observed in all three countries –the reforms stalled or met key challenges around 2015- 2016, after the new contractual frameworks were signed.

As a consequence, the EU gradually adapted its political conditionality and socialisation, leading to the application of negative conditionality in Moldova and pressure exerted on Georgia regarding the electoral reform. However, it is a minority of cases when the EU conditionality and socialisation was partially successful in spite of the lack of coincidence of the preferential fit of the elite with these reforms. In a majority of cases different allegations were given for not adopting key democratic reforms. When the EU was successful its efforts were accompanied by strong social mobilisations.

In Moldova and Georgia, international actors, as the EU, US and the Council of Europe (together with the social protests) managed to influence the cost-benefit calculations of the ruling party. Interestingly, this process showed that external legitimation does not end with norm resonance and salience, but the use of negative conditionality was required in order to change the reform dynamics. More than the normative side of reform, what was at stake both for the government and the EU was the domestic and international image and reputation of Georgia/Moldova as a democratic success story. For the incumbent the compliance with this image is necessary for its electoral support and for receiving external funding, while for the EU, the loss of a success story would compromise the whole Eastern Partnership endeavour.

At this point as well the trends of domestic competition and participation provide key explanation for the effectiveness of international influence on domestic reforms. In a majority of cases domestic legitimisation and consensus-building is replaced by external approval of international donors. However, domestic participation and international legitimacy proved to be complementary and necessary conditions for successful external influence. After the protests emerged in Georgia in 2019, international actors showed greater political engagement and actively applied conditionality. Both elements were essential for successfully influencing the consensus on the 2020 elections. The interactions and collaboration between civil society and international actors has a key role for information exchange, legitimation and provision of common platforms for political negotiation. This is a targeted strategy which allows domestic organisations to recur to international actors in defence of democratic values in order to put indirect pressure on state authorities. International actors provide legitimisation and funding opportunities for developing domestic civil society, as differential empowerment.

Citizens' support and the international pressure were the key variables that led to more equal and democratic reforms, which proves that reputational costs play an essential role in influencing the behaviour of both domestic and international actors. Reputational costs affect negatively incumbents' electoral support and can potentially lead to their loss of power. Therefore, power-related incentives are the basic motivation for the political struggle and for the adoption of reforms that deepen democratic qualities. The use of normative arguments in the struggle for political power, does not necessarily imply normative resonance and salience. Instead these arguments are instrumentally used as a strategy for improving the political reputation and tipping the balance of electoral and international support in their benefit.

It is possible to conclude that the EU's support focuses on the procedural dimensions of the democratic qualities and on differential empowerment of reform-oriented actors. It has faced difficulties in measuring and controlling key political indicators in the field of Judicial independence and other highly political fields. Similar weakness was identified regarding the expert opinions of the Venice Commission in the case of Armenia, due to the prioritisation of the institutional analysis, without considering the broader social and political context. Such assessments might ignore that institutions are ineffective, due to their instrumental use by political actors that deprive important social groups and actors of equal access.

The main difference in the case of Russia is that it mobilises its influence during elections, key political decisions or transfer of power. Therefore, Russia focuses on the outcome rather than on the procedure or legal development of the norms. It strengthens or

weakens domestic actors in order to influence the outcome of domestic policy-making. For this purpose in addition to the traditional cost-benefit incentives, Russian actors count with the increasingly relevant neo-conservative narratives. These linkages reflect certain polarisation of the identity-based cleavages and geopolitical preferences of the electorate in the EaP.

They are the basis for a growing number of interactions and relations between entities from Russia and the three countries studied, leading to effective differential empowerment. This is the case of the relations established between representatives of ROC, Yedinnaya Rossia and political and social actors in the three countries in Armenia, Georgia, and Moldova. Therefore, Russian political and social actors reach out to their counterparts in the EaP and in this way effectively empower and legitimise their actions in the domestic political struggle.

In addition, Russia continues to use its effective economic, military and energy leverage in Armenia, Georgia and Moldova. Positive conditionality has been used for strengthening domestic actors' positions as the provision of more beneficial conditions for Moldovan migrants before the election campaign. On the other hand, the military presence of Russia has been used in Georgia as a sanction for adoption of pro-NATO foreign policy course. In spite of the decisiveness of these measures, both the EU and Russia have added significant flexibility to the regional frameworks and the possibilities for integration since 2015.

### ***THE NEW FEATURES OF GEOPOLITICAL COMPETITION***

The above analysis of international dynamics shows that the geopolitical competition has intensified, as it has become more focused and directly linked to the positions of domestic social and political actors. However, it does not present the need of immediate choice that it did in the 2000s and even in the case of Ukraine in 2014. Therefore, increased incentives are offered to selected domestic elite, which on one hand increases social polarisation, as domestic competition has become closely linked to international actors as the EU and Russia. In addition, both the EU and Russia have further developed and reinforced the normative- and cost-benefit-based instruments of their foreign policies. The development of this more complete alternatives for choice is another illustration of the increased competition in the region.

On the other hand, this more flexible and broader approach adopted by the EU and Russia allows greater opportunity to choose a combination of different aspects of the international incentives offered. Given the reduced exclusivity of political choices, the domestic elite adopts a strategy of selection of the most beneficial incentives. The opportunities of the competing alternatives of the EU and EEU have been skilfully managed by Armenian

elite, which has clearly differentiated between EU-aligned democratic deepening and the geopolitical, military and economic association with Russia. In spite of the structural dependency of its country, its leaders have claimed since 2013 that geo-political and geo-economic alignment with Russia does not necessarily imply the need to follow an authoritarian form of government. In this way, the Armenian elite has linked EU support with the values of democracy, Rule of Law and modernisation.

This discursive shift allowed Armenia to pursue a strategy of diversification of its foreign policy, in a way which allows it to take domestic decisions in a more autonomous way in spite of its high external dependence. Competing regional alternatives are conceived as elements of the opportunity structures of domestic elite. Actors (in Armenia and Moldova) adapted their discourses to the sensibilities of the EU and Russia in order to seek their specialised support. They seek to improve the opportunities for national development and to strengthen their power positions through the advantages offered by the foreign policy actors.

In spite of this flexibility of both the EU and Russia, it is important that geopolitical choices are rewarded or sanctioned by both regional actors. In spite of benefiting from significant democracy support, Armenia has received the smallest amount of EU funding in comparison to the other case studies, that have signed an AA/DCFTA. On the other hand, the geo-political orientation of Igor Dodon and the normalisation policy adopted by Ivanishvili, has been rewarded with the reestablishment of positive trade and migration incentives by Russia. From this perspective, it is possible to conclude that both the EU and Russia adopt positive conditionality as a reward for geopolitical orientation of the EaP countries. In addition, the three case-studies analysed here do not indicate that Russia uses negative conditionality or imposition in order to prevent democratic deepening. Rather, the value-based instruments used for external influence by Russia focus on conservative identity which opposes often directly EU policies in the region, which is perceived as aggressive against the nativist culture.

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**LIST OF INTERVIEWS (FIELD RESEARCH OCTOBER 2018 – MAY 2019 -  
RUSSIA, GEORGIA, ARMENIA, MOLDOVA, EU)**

<b>Codes</b>	<b>Position and Organisation</b>	<b>Meeting</b>
Interview 1	Researcher 1 Russian Academy of Science	22102018
Interview 2.	Researcher 1 MGIMO	24102018
Interview 3.	Professor HSE 1	26102018
Interview 4.	MFA Moldova	30102018
Interview 5.	MFA Russia	31102018
Interview 6.	Professor Higher School of Economics 2	02112018
Interview 7.	Professor Higher School of Economics 3	06112018
Interview 8.	Student in Higher School of Economics	06112018
Interview 9.	Researcher 2 Russian Academy of Science	0711018
Interview 10.	Researcher 2 MGIMO	0711018
Interview 11.	MFA Georgia	1311018
Interview 12.	Research Institute on CIS	1411018
Interview 14.	Institute CIS countries	1611018
Interview 15.	Ministry of Economy Russian Federation	1611018
Interview 16.	Researcher 3 MGIMO	16112018
Interview 17.	Professor Tbilisi State University	27112018
Interview 18.	Professor 1 Ilia State University	06122018
Interview 19.	UNP MP	07122018
Interview 20.	Official 1 International Organisation	07122018
Interview 21.	Former MP and Professor Tbilisi State University	10122018
Interview 22.	Former Republican Party member	11122018
Interview 23.	<u>Professor TSU and former MP</u>	12122018
Interview 24.	Civil Society representatives	13122018
Interview 25.	Official 1 Development agency	13122018
Interview 26.	Civil Society representative	13122018

Interview 27.	Civil Society representative	14122018
Interview 28.	European Georgian	14122018
Interview 29.	Professor Tbilisi State University, member of the State Constitutional Commission	17122018
Interview 30.	Republican Party 1	18122018
Interview 31.	Republican Party 2	18122018
Interview 32.	EU Official 1	19122018
Interview 33.	Civil Society representative	11022018
Interview 34.	Civil Society representative	11022018
Interview 35.	Professor 2 Ilya State University	11022018
Interview 36.	EU official	12022018
Interview 37.	Civil Society representative	12022018
Interview 38.	Civil Society representative	12022018
Interview 39.	Official 2 Development agency	13022018
Interview 41.	Civil Society representative	13022018
Interview 42.	MFA Georgia	14022018
Interview 43.	European Georgia MP	14022018
Interview 44.	Civil Society representative	15022018
Interview 45.	Civil Society representative	22022019
Interview 46.	Bright Armenia MP	25022019
Interview 47.	Civil Society representative	26022019
Interview 48.	Independent researcher	27022019
Interview 49.	Administrative Secretary Parliament	01032019
Interview 51.	Programme manager Implementation Agency 1	05032019
Interview 52.	Leader of political party	07032019
Interview 53.	Official Judiciary Armenia	11032019
Interview 54.	Programme manager Implementation Agency 2	12032019
Interview 55.	Republican Party of Armenia	13032019
Interview 56.	Political scientist	14032019

Interview 57.	EU official	14032019
Interview 58.	Ministry of Justice Official	15032019
Interview 59.	Professor YSU	15032019
Interview 60.	Political analyst	18032019
Interview 61.	MP My Step	19032019
Interview 62.	CSO Activist	20032019
Interview 63.	Parliamentary Officer	21032019
Interview 64.	Member of Parliament, Legal Commission	21032019
Interview 65.	High-level state official	21032019
Interview 66.	EU official	12042019
Interview 67.	Independent Think tank	15042019
Interview 68.	Member of the Parliament	15042019
Interview 69.	Political analyst Democratic Party	16042019
Interview 70.	Justice Constitutional Court	17042019
Interview 71.	Justice Constitutional Court	17042019
Interview 72.	CSO representative	18042019
Interview 73.	PhD Researcher Bocconi	17062019
Interview 74.	Private practice lawyer and former member of the executive	17062019
Interview 75.	CSO representative	18062019
Interview 76.	Programme manager International Organisation 1	18062019
Interview 77.	PSRM representative	18062019
Interview 78.	CSO representative	19062019
Interview 79.	Programme manager Implementation Agency 3	19062019
Interview 80.	Employee Private Law Firm	20062019
Interview 81.	EU Official	20062019
Interview 82.	EU Official	21062019
Interview 83.	Official International organisation	21062019

